89- 1668

No. _____

In the Supreme Court of the United States

October Term, 1989

Carmen R. Stanfield, Petitioner,

v.

Betty W. Horn,
Charles W. Burson,
Lowry F. Kline, and
H. Lee Barfield, II, Respondents.

On Writ of Certiorari to the
Supreme Court of the State of Tennessee

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Can the Tennessee Supreme Court make a federally unconstitutional final judicial decision of the Tennessee Supreme Court using its federally unconstitutional and illegal non-judicially promulgated rules--§§ 13.02(a), 14.01, 14.03 and 14.04 of Tennessee Supreme Court Rule 7 and its board of law examiners' federally unconstitutional and illegal policies and practices of no informal hearing and no formal proceedings under color of §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 to deny and deprive the petitioner of the rights created and protected for the petitioner by (a) the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the United States Constitution, (b) the Civil Rights Redress Act, 42 U.S.C. § 1983, (c) §§ 703(b) and 704(a) of Title VII--42 U.S.C. § 2000e, et . seq., in violation of (d) the Supremacy Clause of the United States Constitution, (e) the Constitution of the United States, (f) the statutory laws of the United States and (g) the case laws of the United States?

2. Can the Tennessee Supreme Court make a federally unconstitutional final judicial decision of the Tennessee Supreme Court using conflicts of interests, prejudices, biases and partialities to deprive the petitioner of the federally protected right to equal protection of the law and right to a fair and impartial due process of law in violation of the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Page(s)

Federal Constitutional Provisions

Federal Statutes

Page(s)

Tennessee State Constitution, Statutes and Rules

Page(s)

Tennessee Board of Law Examiners' Policies

American Bar Association (ABA) Rules of Professional Responsibility and Professional Conduct

Secondary Authority

No. _____

In the Supreme Court of the United States

October Term, 1989

Carmen R. Stanfield, Petitioner,
v.
Betty W. Horn,
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Petition for Writ of Certiorari to
The Supreme Court of the State of Tennessee

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Carmen R. Stanfield, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Tennessee entered in this case on March 1, 1990.

OPINION BELOW

The March 1, 1990, judgment of the Supreme Court of the State of Tennessee, whose decision is herein sought to be reviewed, is appended at page A.1.

JURISDICTION

The judgment of the Supreme Court of Tennessee was enter-

ed on March 1, 1990. The jurisdiction of the Supreme Court of the United States is invoked pursuant to 28 U.S.C. § 1257(a) which states that: "(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a...statute of any State is drawn in question on the ground of its being repugnant to the Constitution,... or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or...statutes of...the United States."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and statutory provisions involved are:

(1) The Fourteenth Amendment of the United States Constitution which states that: "Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

(2) The Civil Rights Redress Act, 42 U.S.C. § 1983 which states that: "Every person who, under color of *any* statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 17 Stat. 13 (1971)

(3) Tennessee Supreme Court Rule 7, Article 13, Section 2(a),

which states that: "Petitions to board. Any person who is aggrieved by any action of the board involving or arising from the enforcement of this rule *(other than failure to pass the bar examination)* may petition the board for such relief as is within the jurisdiction of the board to grant."

(4) Tennessee Supreme Court Rule 7, Article 14, Section 1, which states that: "Petition for Review. Any person aggrieved by any action of the board may petition this court for a review thereof, as under the common law writ of certiorari....Any such petition must be filed within *60 days* after the action complained of."

(5) Tennessee Supreme Court Rule 7, Article 14, Section 3, which states that: "Exhaustion of Board Remedies: The Court will entertain no application or petition from any person who may be effected [affected] directly or indirectly by this Rule, unless that person has first exhausted his *remedy* before the board."

(6) Tennessee Supreme Court Rule 7, Article 14, Section 4, which states that "*No Review* of Failure to Pass Bar Examination. The only *remedy* afforded for a grievance for failure to pass the bar examination shall be the right to reexamination as herein provided."

(7) Respondents' policy and practice of *No review* of Examination Papers which states that: "There is *no* provision in the rule for review of examination papers by the applicant."

(8) Respondents' policy and practice of *No review* of Examination Results which states that: "It is the practice of the board that neither the members of the board nor any of the assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination."

STATEMENT OF THE CASE

Under Tennessee Code Annotated 23-1-103[1], the state legislature promulgated rules to examine bar candidates for the practice of law in Tennessee.

Nonjudicially, the state supreme court promulgated Tennessee Supreme Court Rule 7 for a board of law examiners to examine bar candidates for the practice of law in Tennessee. Under § 13.02(a) of Tennessee Supreme Court Rule 7, whenever the board alleges, as in the present case, that a bar examinee earned no passing test scores on the essay portion of the bar examination, (1) the bar examinee is automatically denied both the right to see his or her examination papers and the right to a hearing, and (2) the board itself is automatically denied the authority to provide either an informal hearing or a formal proceeding before the board for such a bar examinee. Under § 14.04 of Tennessee Supreme Court Rule 7, whenever the board alleges, as in the present case, that a bar examinee earned no passing test scores on the essay portion of the bar examination, the bar examinee is automatically required to pay additional money for reexamination.

In order to administer the provisions of §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7, the board nonjudicially prepared and followed the practices of (1) no review of examination papers, (2) no review of examination results, (3) no informal hearing and (4) no formal proceeding in the matter of any bar examinee whom the board alleges, as in the present case,

[1]T.C.A. 23-1-103 states that: "Examination of Applicants.--There shall be an examination of persons applying for license to practice as attorneys and counselors at law at the cities of Knoxville, Nashville, and Memphis, respectively, and at such other places and times as the [Tennessee] Supreme Court may direct. The [Tennessee] Supreme Court shall prescribe rules to regulate the admission of persons to practice law and providing for a uniform system of examinations, which shall govern and control admissions to practice law, and to regulate such board in the performance of its duties."

earned no passing test scores on the essay portion of the bar examination.

In a letter dated February 5, 1987, the petitioner's application to take the February, 1987, Tennessee bar examination was approved by the board. The board not only informed the petitioner that the examination would be given on February 25 and 26, 1987, and that the quantified test scores would be reported on April 15, 1987, but also requested the petitioner to buy and bring papers on which to write the essay portion of the bar examination at the examination site. On February 25 and 26, 1987, the petitioner took the bar examination.

On April 11, 1987, the board held behind the petitioner's passing quantified test scores on the multistate portion and the essay portion of the bar examination and in an empty-worded letter, the board informed the petitioner that while the petitioner passed the multistate portion of the bar examination, the petitioner did not pass the essay portion of the bar examination.

In a letter of April 11, 1987, the board cited and enforced against the petitioner the provisions of §§ 13.02(a) and 14.04 of Tenn. Sup. Ct. R. 7, as well as the board's practices in the administration of the aforementioned two sections of Tennessee Supreme Court Rule 7. Finally, in the same letter of April 11, 1987, the board offered to send the petitioner copies of the petitioner's examination papers on the essay portion upon the submission of a written request by the petitioner.

On April 14, 1987, the petitioner accepted the board's offer by submitting a written request for the examination papers to determine any material evidence of a failure on the essay portion of the bar examination. The board refused to send the examination papers. Again, on April 17, 1987, the petitioner in writing requested the board to send the examination papers and also stated in the letter that any further refusal to send the examination papers would leave the petitioner no choice but to sue in federal court.

The board still refused to send the examination papers and the petitioner filed a formal complaint with the United States Civil Rights Commission charging violation of the petitioner's civil rights by the board. The United States Civil Rights Commission referred the petitioner's complaint to the United States Department of Education which said that since it did not fund the activities of the board it could not act upon the petitioner's complaint.

After filing the formal complaint, the board sent the petitioner an undated test score sheet showing that the petitioner passed the essay portion of the bar examination, but the board still refused to release the petitioner's passing test scores for both the multistate portion and the essay portion of the bar examination.

Under (a) the Fourteenth Amendment of the United States Constitution, (b) 28 US.C. § 1331, (c) 28 U.S.C. § 1343(a)(3) and (4), (d) §§ 703(b) and 704(a) of Title VII--42 U.C.S.§ 2000e, et. seq., and (e) 42 U.S.C. § 1983, the petitioner on February 25, 1988, sued the board, hereinafter referred to as the "respondents", in the United States District Court for the Middle District of Tennessee, Nashville Division, hereinafter referred to as the "district court", for the recovery of (a) the passing test scores the respondents defrauded the petitioner (b) the $25 the respondents defrauded the petitioner, (c) $10 million for compensatory damages, (d) $10 million for punitive damages and for the district court to declare §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 unconstitutional. (*see* complaint at A.4). On March 17, 1988, the respondents moved the district court to dismiss the petitioner's case on the grounds of (a) failure to state a claim upon which relief can be granted and (b) lack of subject-matter jurisdiction. On March 23, 1988, the petitioner replied urging the district court to deny the respondents' motion to dismiss on the grounds that the petitioner's case contained claims upon which relief can be granted and the district court has subject-matter jurisdiciton over the petitioner's case.

Although 28 U.S.C. § 636(b)(1)(A) prohibits the district court judge from doing so, the district court judge on March 30, 1988, assigned the respondents' motion to dismiss to a magistrate to consider and determine the issues of (a) failure to state a claim upon which relief can be granted and (b) lack of subject-matter jurisdiction. Although Article III, § 2, clause 2, of the United States Constitution prohibits any judge of the lower federal courts from doing so, on September 30, 1988, the magistrate physically changed the original verb *"do"* into a new verb *"do not"* in the rule of law in the Feldman case and then used the meaning of the new verb *"do not"* to recommend that the district courts *"do not"* have subject-matter jurisdiction over the administration of state bar rules involving the respondents' arbitrary, capricious and fraudulent administration of test scores on the Tennessee bar examination. (*see* Magistrates Report at A.78) On December 1, 1988, the petitioner objected to the magistrate's report and recommendation urging the district court to overrule and reject it on the grounds that it violated the United States Constitution and statutes, substituted the petitioner's issues of fact and law with the speculative *"view"* of the magistrate and incompatible cases, and it was without basis in fact and law.

On January 9, 1989, the district court judge not only held that "the magistrate's report is adopted and approved" but also ruled that the respondents acted in a "judicial capacity" within the meaning of Feldman when the respondents arbitarily, capriciously and fraudulently held behind and hid from the petitioner passing test scores earned by the petitioner on the February, 1987, Tennessee bar examination, and accordingly, the district court judge granted the respondents' motion to dismiss the petitioner's case. (*see* District Court Order at A.114) On January 18, 1989, the petitioner appealed the district court judge's court ruling and order of January 9, 1989, to the United States Sixth Circuit Court of Appeals. On August 24, 1989, the 6th circuit

affirmed the decision of the district court. *(see* Sixth Circuit Court Order at A.133) The petitioner sought a writ of certiorari in the United States Supreme Court on September 25, 1989. Certiorari was denied on December 11, 1989. (*see* United States Supreme Court Order at A.136) On January 11, 1990, the petitioner filed in the Supreme Court of the State of Tennessee a "Petition for Review of the Federal Constitutionality of the Respondents' Test Score Fraud and Actions Under and §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 that Violated the Petitioner's Rights Created and Protected by the Constitution, Statutes and Case Law of the United States." The petition was denied on March 1, 1990. The petitioner now prays the Supreme Court of the United States for a writ of certiorari.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Reason 1

> The final judicial decision of the Tennessee Supreme Court resting entirely upon the federally unconstitutional nonjudicially promulgated and administrative rules--§§ 13.02(a), 14.01, 14.03, and 14.04--of Tennessee Supreme Court Rule 7 in denying a petition to review a federal question is repugnant to and inconsistent with the Constitution and laws of the United States.

1.1 The first reason why the writ of certiorari should be granted consists of (a) the fact that, under §§ 13.02(a), 14.01, 14.03 and 14.04 of Tennessee Supreme Court Rule 7, no United States Court can review, and has ever reviewed, a factually and legally valid federal question in a test-score fraud case as the

petitioner has raised a factually and legally valid federal question in the present test-score fraud case against the respondents, (b) the fact that, under §§ 13.02(a), 14.01, 14.03 and 14.04, no Tennessee court can review, and has ever reviewed, a factually and legally valid federal question in a test-score fraud case as the petitioner has raised a factually and legally valid federal question in the present test-score fraud case against the respondents, (c) the fact that §§ 13.02(a), 14.01, 14.03 and 14.04 and the respondents' policies and practices of no informal hearing and no formal proceedings as enforced against the petitioner in violation of the petitioner's federally protected rights are repugnant (1) to the Constitution of the United States, (2) to the statutory laws of the United States and (3) to the case laws of the United States and (d) the fact that the Tennessee Supreme Court's final judicial decision resting entirely on §§ 13.02(a), 14.01, 14.03 and 14.04 is repugnant to and inconsistent with the Constitution and laws of the United States.

1.2 The respondents defrauded the petitioner of eight (8) out of twelve (12) correct answers earned by the petitioner on the essay portion of the bar examination and the respondents informed the petitioner that while the petitioner passed the multistate portion of the bar examination, the petitioner did not pass the essay portion of the bar examination. The respondents received from the petitioner a $25 fee and a signed intent form for reexamination on the sole ground of the respondents' allegation that the petitioner earned no passing test scores on the essay portion of the bar examination. Under color of §§ 13.02(a), 14.04 and the respondents' policies and practices of no informal hearing and no formal proceedings, when the respondents refused to comply with the petitioner's request for the respondents to prove by facts that the petitioner earned no passing test scores on the essay portion of the bar examination, the petitioner not only claimed violation of the petitioner's rights created and protected by the United States Constitution, United States statu-

tory laws and United States case laws, but also challenged the federal constitutionality of §§ 13.02(a) and 14.04 and the respondents' policies and practices of no informal hearing and no formal proceedings in keeping with §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7.

1.3. On February 25, 1988, the petitioner filed a formal legal complaint *(see* Appendix A.4) in the United States District Court against the respondents. From February 25, 1988, up to and including December 11, 1989, the respondents' motion to dismiss the petitioner's test-score fraud case against the respondents was procedurally reviewed by the United States District Court (*see* Appendix A.78 and A.114), the United States Sixth Circuit Court of Appeals (*see* Appendix A.133), and the United States Supreme Court (*see* Appendix A.136). On January 11, 1990, the petitioner filed the same test-score fraud case with the Tennessee Supreme Court for a review (*see* Tennessee Supreme Court Order at Appendix A.1).

1.4. No court either in the federal judicial system or in the Tennessee judicial system has used judicial proceedings based on the contested case principle to review any material evidence disproving the fact that the petitioner passed both the multistate portion and the essay portion of the bar examination. This fact removed the petitioner's federal claim from the level of failing the bar examination and it placed the petitioner's federal claim at the level of passing the bar examination.

1.5. In the absence of a judicial decision establishing a failure by the petitioner on the essay portion, the respondents' mere allegation of a failure in empty and unsubstantiated words does not make the mere allegation a factual failure. As a federal question raised by the petitioner and under federal law, the respondents cannot sit as judges over their own allegation of failure to adjudge the petitioner guilty of the respondents' allegation of failure before the petitioner has had a day in a court of law in which the respondents have proved the allegation of

failure to be true. To do otherwise, as the Tennessee Supreme Court has done, is to make the respondents' allegation of failure irrebutable in violation of the Constitution of the United States and the case laws of the United States which specifically provide that:

> "The fairness which due process requires in civil and criminal procedures alike demands that when the law creates a presumption of guilt or misconduct or incapacity, this presumption may not be made irrebutable. The person who is the subject of the presumption must be given the chance to rebut it if he can. This principle governed the Court's decision in Slochower v. Board of Education, 350 U.S. 551, 559, 76 S.Ct. 637, 641, 100 L.Ed.2d 692 (1956)," Robert F. Cushman, Cases in Civil Liberties 58 (1979).

1.6. Specifically, the petitioner's rights were created and protected entirely by the following Constitutional and statutory laws of the United States: (a) the Fourteenth Amendment of the United States Constitution, (b) 28 U.S.C. § 1331, (c) 28 U.S.C. § 1343(a)(3) and (4), (d) §§ 703(b) and 704(a) of Title VII--42 U.C.S. § 2000e, et. seq., and (e) 42 U.S.C. § 1983. As in the present case, the U. S. Supreme Court has held that the claim of the violation of rights created and protected by the Constitution and laws of the United States raises a federal question. Cohens v. Virginia, 6 Wheat. 738, 822, 22 U.S. 738, 822, 6 L.Ed. 204 (1824) which established the precedent for Osborn v. Bank of the United States, 9 Wheat. 738, 822, 22 U.S. 738, 822, 6 L.Ed. 204 (1824). The U. S. courts of appeals have held that the claim of the commission of a test-score fraud by bar examiners against a bar examinee in violation of the federally protected rights of the bar examinee raises a federal question. Richardson v. McFad-

den, 540 F.2d 744, 750 (4th Cir. 1976) and Sutton v. Lionel, 585 F.2d 400, 401 (9th Cir. 1978). The U. S. Supreme Court has held that the claim of the denial of equal protection of the law and the deprivation of both procedual due process of law and substantive due process of law raises a federal question. Allgeyer v. Louisiana, 165 U.S. 578, 589, 17 S.Ct. 427, 431, 41 L.Ed. 832 (1897); Schware v. Board of Examiners, 353 U.S. 232, 238-39, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957); Richardson v. McFadden, 540 F.2d 744, 750 (4th Cir. 1976); Slochower v. Board of Education, 350 U.S. 551, 559, 76 S.Ct. 637, 641, 100 L.Ed.2d 692 (1956).

1.7. In effect, from February 25, 1988, when the petitioner first filed in the U. S. district court the test-score fraud case against the respondents up to and including January 11, 1990, when the petitioner filed in the Tennessee Supreme Court the same test-score fraud case against the respondents, the petitioner raised, and continued to raise, a factual, legal and substantial federal question.

1.8. As shown above, the petitioner's case against the respondents rests in part upon 42 U.S.C. § 1983. The U. S. Supreme Court held that while the U. S. Congress did not establish a statute of limitations for 42 U.S.C. § 1983 cases, the U. S. Congress under 42 U.S.C. § 1988 not only instructed federal courts to borrow related state statute of limitations in reviewing 42 U.S.C. § 1983 cases, but also authorized federal courts to disregard any state statute of limitations that is repugnant to and inconsistent with the Constitution and laws of the United States. Board of Regents v. Tomanio, 446 U.S. 478, 100 S.Ct. 1790, 64 L.Ed.2d 640 (1980).

1.9. As shown above, under 42 U.S.C. § 1983, the petitioner raised a federal question over which both federal courts and state courts, including the Tennessee Supreme Court, have concurrent jurisdiction. Unless otherwise provided by the U. S. Congress, the state courts, including the Tennessee Supreme Court, are required under federal law to review an action even

though the action is entirely based on a federal claim or a federal question. Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-478, 101 S.Ct. 2870, 2875, 69 L.Ed.2d 784 (1981) and Claflin v. Houseman, 93 U.S. 130, 136, 23 L.Ed. 833 (1876). And regardless of the state law, filing of the complaint tolls the state statute of limitations where the complaint is based on a federal claim or a federal question. Bomar v. Keyes, et al., 162 F.2d 136 (2d Cir. 1947).

1.10. In effect and as regards 42 U.S.C. § 1983 federal question, both federal courts and state courts, including the Tennessee Supreme Court, are required under 42 U.S.C. § 1988 in reviewing a 42 U.S.C. § 1983 federal question to disregard any state law that is repugnant to and inconsistent with the Constitution and laws of the United States. This is especially so when the Supremacy clause of the U. S. Constitution is taken into account.

1.11. The Tennessee statute of limitations which a Tennessee court reviewing a 42 U.S.C. § 1983 federal question would properly consider provides for a 1-year limitation, a 3-year limitation, a 10-year limitation and repeated new actions after an adverse decision as shown below.

> **28-3-104. Personal tort actions.** --(a) Actions for libel, for injuries to the person, false imprisonment, malicious prosecution, criminal conversation, seduction, breach of marriage promise, actions and suits against attorneys for malpractice whether said actions are grounded or based in contract or tort civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes, and actions for statutory penalties shall be commenced within one (1) year after cause of action accrued. Tenn. Code Ann. § 28-3-104 (1980).

28-3-105. Property tort actions--Statutory liabilities--Alienation of affections.--The following actions shall be commenced within three (3) years from the accruing of the cause of action:...

(2) Actions for the detention or conversion of personal property;

(3) Civil actions based upon the alleged violation of any federal or state statute creating monetary liability for personal services rendered, or liquidated damages or other recovery therefor, when no other time of limitations is fixed by the statute creating such liability. Id.

28-3-110. Actions on public officers' and fiduciary bonds--Actions not otherwise covered.--The following actions shall be commenced within ten (10) years after the cause of action accrued:...

(2) Actions on judgments and decrees of courts of record of this or any other state or government; and

(3) All other cases not expressly provided for. Id.

28-1-105. New action after adverse decision.--If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding his right of action, or where the judgment or decree is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the

plaintiff, or his representatives and privies, as the case may be, may, from time to time, commence a new action within one (1) year after the reversal or arrest. Id.

1.12. As exemplified below, the judicial construction of the Tennessee statute of limitations, especially the new action provisions, is consistently controlled by the question as to whether or not the plaintiff's right of action has been concluded judicially on the basis of the contested case principle:

> **28-1-105. New Action after adverse decision not foreclosing merits:** If the action is commenced within the time limited by a rule or statute of limitation, but the judgment or decree is rendered against the plaintiff upon any ground not concluding his right of action, or where the judgment is rendered in favor of the plaintiff, and is arrested, or reversed on appeal, the plaintiff, or his representatives and privies, as the case may be, may from time to time, commence a new action within one (1) year after the reversal or arrest. Tenn. Code Ann. § 28-1-105 (1980).
>
> **3. --Liberal Construction.** This section is remedial and should be liberally construed to insure to a diligent suitor a hearing in court until he reaches a judgment on the merits.... Id., Privett v. West Tennessee Power & Light Co., 19 Fed. Supp. 812 (W.D. Tenn. 1937), *aff'd*, 103 F.2d 1021 (6th Cir. 1939).
>
> **33. --Voluntary Nonsuit.** It is wholly immaterial whether a nonsuit was voluntary, so long as

the dismissal was not on a ground concluding plaintiff's right of action. Id.

39. --Dismissal for Want of Jurisdiction. Under this section the one year's saving clause would give the plaintiff another year within which to bring his suit, upon the reversal by the appellate court for want of jurisdiction. Id., Larkins v. Saffarans, 15 F. 147 (C.C. Tenn. 1883).

41. --Involuntary Dismissal in Federal Court. Suit within one year in state court following dismissal of case in federal court for violation of federal rule of procedure was not barred where statute under which new federal rules was adopted states that rule "shall neither abridge, enlarge nor modify the substantive rights of any litigant," since right of plaintiff to refile within one year after dismissal without a trial on the merits was a substantive right. Id., Adcox v. Southern Ry. Co., 182 Tenn. 6, 184 S.W.2d 37, 156 A.L.R. 1091 (1944).

1.13. In Tennessee, the judicial construction of the provisions of Tenn.Code Ann. 28-3-104 relative to the, "Commencement of Action," is essentially the same requirement of filing a formal complaint in a court of law: "The suing out of a summons is the commencement of an action that interrupts [tolls or stops] the running of the statute." Whitson v. Tennessee Cent. R.R., 163 Tenn. 35, 40 S.W.2d 396 (1931). And as long as the plaintiff's right of action either in the federal court, or in the state court has not been concluded judicially on the basis of the

contested case principle, the plaintiff can exercise his or her right of action by filing the first complaint either in a federal court or in a state court and then by filing the second complaint in the same action either in a state court or in a federal court. Tenn. Code Ann. 28-3-104, Tenn. Code Ann. 28-3-105, Tenn. Code Ann. 28-1-105, Privett v. West Tennessee Power & Light Co., 19 Fed. Supp. 812 (W. D. Tenn. 1937), *aff'd*, 103 F.2d 1021 (6th Cir. 1939), Larkins v. Saffarans, 15 F. 147 (C.C. Tenn. 1883), Adcox v. Southern Ry. Co., 182 Tenn. 6, 184 S.W.2d 37, 156 A.L.R. 1091 (1944). Equally, this applies to 42 U.S.C. § 1983 federal question over which both federal courts and state courts, including the Tennessee Supreme Court, have concurrent jurisdiction. Gulf Offshore Co. v. Mobil Oil Corp., 453 U.S. 473, 477-478, 101 S.Ct. 2870, 2875, 69 L.Ed.2d 784, (1981) and Claflin v. Houseman, 93 U.S. 130, 136, 23 L.Ed. 833 (1876).

1.14. Considering the fact that the petitioner brought the action under the Constitution and laws of the United States challenging the federal constitutionality and legality of §§ 13.02(a), 14.01, 14.03 and 14.04 of Tennessee Supreme Court Rule 7 and the respondents' administrative enforcement decisions, policies and practices of no informal hearing and no formal proceedings under color of §§ 13.02(a), 14.01, 14.03 and 14.04, the petitioner had from April 14, 1987, to April 14, 1988, under Tenn.Code Ann. 28-3-104, Wright v. State of Tennessee, 613 F.2d 647 (6th Cir. 1980), or from April 14, 1987, to April 14, 1990, under Tenn.Code Ann. 28-3-105 to commence an action in court. The petitioner commenced an action in federal court on February 25, 1988, and the case remained in federal court from February 25, 1988, to December 11, 1989. Again, the petitioner had from December 11, 1989, to December 11, 1990, under Tenn. Code Ann. 28-1-105 to commence a new action. The petitioner recommenced the same action in the Tennessee Supreme Court on January 11, 1990. Evidently, the time prescribed by the Tennessee statute of limitations was factually and

legally tolled each time the petitioner filed the action in court within the time prescribed by the Tennessee statute of limitations.

1.15. The filing of the complaint and other subsequent pleadings by the petitioner raising a federal question as of February 25, 1988, up to and including January 11, 1990, and the filing of the counterpleadings as of February 25, 1988, up to and including February 12, 1990, by W. J. Michael Cody, then attorney general, Charles W. Burson, attorney general, John K. Walkup, then deputy attorney general, and now solicitor general, William E. Young, then assistant attorney general, and Charles L. Lewis, deputy attorney general, on behalf of Charles W. Burson, et al., who were and still are named in the test-score fraud case, imply (a) that the time prescribed by the statute of limitations was tolled, (b) that the Tennessee Supreme Court which not only appointed the members of the board of law examiners who committed the test-score fraud in violation of the petitioner's federally protected rights, but also appointed Charles W. Burson as attorney general after the commission of the test-score fraud in violation of the petitioner's federally protected rights had factual and legal notice of the test-score fraud case against Charles W. Burson, et al., as members of the board since both Charles W. Burson, et al., as members of the board and Charles W. Burson, as attorney general, were factually and legally responsible and accountable to the Tennessee Supreme Court in the performance of the legal duties of the board, the office of the attorney general and the counsel for Charles W. Burson, et al., in the test-score fraud case and (d) that Charles W. Burson, et al., as the respondents, Charles W. Burson, as the attorney general, representing Charles W. Burson, et al., and the Tennessee Supreme Court cannot plead the statute of limitations.

1.16. The judicial duty imposed upon state courts, including the Tennessee Supreme Court, by the Supremacy of the

Constitution and laws of the United States, in this case, in relation to 42 U.S.C. § 1983 federal question over which both federal courts and state courts, including the Tennessee Supreme Court, have concurrent jurisdiction is preserved by Tenn. Code Ann. §§ 16-3-403 and 27-8-101 (1980), which provide that:

> **16-3-403. Rules not to affect substantive rights--Consistency with constitutions.**--Such rules shall not abridge, enlarge or modify any substantive right, and shall be consistent with the constitutions of the United States and the state of Tennessee.
>
> **27-8-101. Constitutional basis.**--The writ of certiorari may be granted whenever authorized by law, and also in all cases where an inferior tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction conferred, or is acting illegally, when, in the judgment of the court, there is no other plain, speedy, or adequate remedy.

1.17. Under Tenn. Code Ann. 27-8-101, the petitioner on January 11, 1990, petitioned the Tennessee Supreme Court on the grounds: (a) that under §§ 13.02(a), 14.01, 14.03 and 14.04 no court either in the federal judicial system or in the Tennessee judicial system can review, and has ever reviewed, the test-score fraud case against the respondents in which a federal question has been raised, (b) that there was no other plain, speedy, or adequate remedy, (c) that Tenn. Code Ann. 27-8-101 authorizes the Tennessee Supreme Court on its own initiative to review a federal question claiming violation of federally created and protected substantive rights since Tenn. Code Ann. 16-3-403

prohibited the Tennessee Supreme Court from nonjudicially promulgating and administering any rules in violation of federally created and protected substantive rights, and (d) that the federal court orders cited in and appended to the petition constituted conclusive evidence not only of the fact that there has been no other plain, speedy, or adequate remedy, but also of the fact that the petitioner's right of action raising a federal question has not been concluded judicially.

1.18. As long as the petitioner raised a 42 U.S.C. § 1983 federal question and no court in Tennessee on the basis of the contested case principle judicially reviewed the federal question raised by the petitioner to conclude judicially the petitioner's right of action, the Tennessee Supreme Court was duty bound under federal law to review the 42 U.S.C. § 1983 federal question. The final judicial decision of the Tennessee Supreme Court denying the petition to review the 42 U.S.C. § 1983 federal question raised by the petitioner in the test-score fraud case against the respondents has the following implications:

(a) it upheld the validity of Tennessee Supreme Court nonjudicially promulgated rules--§§ 13.02(a), 14.01, 14.03, 14.04--and their administration by the respondents in violation of the Supremacy of the Constitution and laws of the United States,
(b) it denied and deprived the petitioner the right of equal protection of the law, the right of procedural due process of law and the right of substantive due process of law created and protected by the Constitution and laws of the United States,
(c) it is repugnant to and inconsistent with the Constitution and laws of the United States and
(d) therefore, it is unconstitutional and illegal under the Constitution and laws of the United States.

1.19. In relation to the petitioner's procedural and substantive rights created and protected by the Constitution and laws of the United States, §§ 13.02(a), 14.01, 14.03, 14.04 and the respondents' policies and practices of no informal hearing and no formal proceedings under color of §§ 13.02(a), 14.01, 14.03 and 14.04 of Tennessee Supreme Court Rule 7 are inherently and practically repugnant to, inconsistent with and therefore unconstitutional and illegal under the Constitution and laws of the United States on the following grounds:

(a) the provisions of § 14.01 are nullified, voided and negated by the provisions of § 14.03,
(b) the provisions of § 14.03 are nullified, voided and negated by the provisions of §§ 13.02(a) and 14.04,
(c) the provisions of §§ 13.02(a) and 14.04 (1) do not permit the review of a factually and legally valid federal question as in the present case by federal courts as exemplified by the U. S. district court's January, 1989, order, the United States Sixth Circuit Court of Appeals' order of August, 1989, and the United States Supreme Court's order of December, 1989, (2) do not permit the review of a factually and legally valid federal question as in the present case by Tennessee Courts as exemplified by the Tennessee Supreme Court's order of March 1, 1990, (3) only permit the endless commission of test-score fraud against bar examinees in blatant and flagrant violation of bar examinees' federally protected rights as evidenced by the present case, (4) denied and deprived the petitioner equal protection of the law and due process of law in violation of the Constitution and laws of the United States, and (5) therefore, §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 are repugnant to and inconsistent with the Constitution of the United States, the statutory laws of the United States and the case laws of the United States.

1.20. In effect, the March 1, 1990, order of the Tennessee Supreme Court which left unreviewed the respondents' violation of federal laws and which by implication upheld the validity of its own nonjudicially promulgated rules and their administration by the respondents over the Constitutional, statutory and case laws of theUnited States is repugnant to and inconsistent with the Constitution of the United States, the statutory laws of the United States and the case laws of the United States.

Reason 2

> The use of conflicts of interests, prejudices, biases and partialities by the Tennessee Supreme Court to deny review of a federal question is repugnant to and inconsistent with the Constitution and laws of the United States.

2.1. The second reason why the writ of certiorari should be granted consists of the Tennessee Supreme Court's unconstitutional use of conflicts of interests, prejudices, biases, partialities and the irresistible spellbound self-interest motives of conflicts of interests, prejudices, biases and partialities inevitably causing misrepresentation of facts and deception to deny the petitioner equal protection of the law and a fair and impartial due process of law in violation of the Constitution and laws of the United States.

2.2 The Tennessee Supreme Court appoints the members of the board of law examiners. Tenn. Sup. Ct. R. 7, Art. 12, § 1. Charles W. Burson, appointed by the Tennessee Supreme Court as president of the board, was among the board members who committed the test-score fraud against the petitioner in violation of the federally protected rights of the petitioner. The Tennessee Supreme Court appoints the attorney general of Tennessee. Tenn. Const. art. VI, § 5 and Tenn. Code Ann. 8-6-101 (1980).

Charles W. Burson, appointed by the Tennessee Supreme Court as state attorney general (to replaceW. J. Michael Cody), is one of the respondents against whom the petitioner filed the test-score fraud case in the Tennessee Supreme Court. The Tennessee Supreme Court requires the attorney general to defend the board in all lawsuits against the board. Tenn. Sup. Ct. R. 7, Art. 12, § 14(b). Charles W. Burson, appointed by the Tennessee Supreme Court as state attorney general only after the commission of the test-score fraud against the petitioner, is legally and factually, required to sit as state attorney general presiding over the test-score fraud case against Charles W. Burson, et al. Legally and factually, the state attorney general is required to give the Tennessee Supreme Court a legal opinion on any Constitutional challenge to §§ 13.02(a) and 14.04 and the board's policies, practices and actions in the board's enforcement of §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7. Charles W. Burson, appointed by the Tennessee Supreme Court as state attorney general after the commission of the test score fraud against the petitioner, is legally and factually required to give the Tennessee Supreme Court a legal opinion on the test-score fraud case against Charles W. Burson, et al., filed by the petitioner in the Tennessee Supreme Court.

2.3. Under Tenn. Code Ann. 8-6-103, the attorney general appoints all of his assistants and all hold their office at the "pleasure" of the attorney general. Under Tenn. Code Ann. 8-6-103, John K. Walkup, William E. Young, and Charles L. Lewis held their office at the "pleasure" of Charles W. Burson. They were instructed and supervised by Charles W. Burson. They were responsible and accountable to Charles W. Burson in the performance of any duty assigned to them by Charles W. Burson. Tenn. Code Ann. 8-6-301(b) (1980).

2.4. As members of the board of law examiners, Charles W. Burson, et al., while holding behind, hiding and covering-up the passing test scores of eight (8) out of twelve (12) correct answers

earned by the petitioner on the essay portion of the February, 1987, Tennessee bar examination not only fraudulently informed the Tennessee Supreme Court but also fraudulently informed the petitioner that the petitioner earned no passing test scores on the essay portion of the bar examination. Charles W. Burson, et al., fraudulently received from the petitioner a $25 fee and a signed intent form for reexamination on the sole ground of the respondents' fraudulent allegation that the petitioner earned no passing test scores on the essay portion of the bar examination.

2.5. Under the names of W. J. Michael Cody, Charles W. Burson, John K. Walkup, William E. Young and Charles L. Lewis, pleadings from the office of the attorney general in response to the test score fraud case against Charles W. Burson, et al., took the following incredible position: (a) in the federal courts, when the petitioner maintained that under §§ 13.02(a), 14.01, 14.03 and 14.04 no state court could review the federal question raised by the petitioner in the test score fraud case against the respondents, Charles W. Burson, et al., using the office of the attorney general in objectifying and substantiating conflicts of interests (a wrongdoer sitting as a judge over his own wrongdoing and judging his own wrongdoing with the ruling that: the wrongdoer, as the king and as the law, standing above the law, can do no wrong before the law), informed the federal courts that the Tennessee Supreme Court could review the test-score fraud case under Tennessee Supreme Court Rule 7, (b) in the federal courts, when the petitioner maintained that the commission of test score fraud by the respondents against the petitioner in violation of the petitioner's federally protected rights was a federally unlawful and illegal action outside the scope of lawful activities and duties, Charles W. Burson, et al., using the office of the attorney general in objectifying and substantiating conflicts of interests (a wrongdoer sitting as a judge over his own wrongdoing and judging his own wrongdo-

ing with the ruling that: the wrongdoer, as the king and as the law, standing above the law, can do no wrong before the law), informed the federal courts not only that the test score fraud itself was a final judicial decision of the Tennessee Supreme Court, but also that the Tennessee Supreme Court was a party to the test score fraud case, (c) in the Tennessee Supreme Court, when the petitioner maintained that under Tenn. Code Ann. 27-8-101 the Tennessee Supreme Court could on its own initiative review the federal question raised by the petitioner in the test score fraud case against the respondents, Charles W. Burson, et al., using the office of the attorney general in objectifying and substantiating conflicts of interests (a wrongdoer sitting as a judge over his own wrongdoing and judging his own wrongdoing with the ruling that: the wrongdoer, as the king and as the law, standing above the law, can do no wrong before the law), now countermaintained that (1) the Tennessee Supreme Court has no legal authority under Tennessee Supreme Court Rule 7 to review the federal question, (2) the Tennessee Supreme Court has no legal authority under Tenn. Code Ann. 27-8-101 to review the federal question, and by implication (3) the Tennessee Supreme Court has no legal authority under the Constitution and laws of the United States to review the federal question raised by the petitioner in the test score fraud case against Charles W. Burson, et al.

2.6. Charles W. Burson, first, as president of the board, and, second, as attorney general of the state, in both instances appointed by the Tennessee Supreme Court, has been responsible and accountable to the Tennessee Supreme Court. John K. Walkup, William E. Young and Charles L. Lewis who held their offices at the "pleasure" of Charles W. Burson were responsible and accountable to Charles W. Burson. Motivated and blinded by self-interests and conflicts of interests, in the eyes of Charles W. Burson, the rules of the Tennessee Supreme Court are the rules of the "king" who stands above the law and can do no

wrong in nonjudicially making rules that are repugnant to and inconsistent with the Constitution and laws of the United States. Motivated and blinded by self-interests and conflicts of interests, in the eyes of John K. Walkup, William E. Young and Charles L. Lewis, the commission of test score fraud by Charles W. Burson, et al., as members of the board, and Charles W. Burson, now as attorney general of the state, has been the action of the "king" who stands above the law and can do no wrong in violating the federally protected rights of the petitioner against whom the test score fraud was committed. Evidently, the Tennessee Supreme Court's March 1, 1990, order which rests entirely on conflicts of interests, prejudices, biases, partialities, misrepresentations, deception, self-contradictions, inconsistencies, and injustice not only denied and deprived the petitioner of equal protection of the law and due process of law in violation of the Constitution and laws of the United States, Schware v. Board of Education, 353 U.S. 232, 238-39, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957), but also is repugnant to and inconsistent with the American Bar Association (ABA) Rules of Professional Responsibility. (*see* ABA Disciplinary Rule (DR) 1-102(A)(4) and (5), DR 5-101(D), DR 8-101, ABA Model Rules 3.3, 3.4(a) and 8.4.)

Reason 3

The federal question was substantially and timely raised in the Tennessee Supreme Court.

3.1. In the present case, whether the federal question has been substantially and timely raised in the Tennessee Supreme Court is itself a federal question that the United States Supreme Court should decide. The petitioner's position is that the federal question was substantially and timely raised in the Tennessee Supreme Court. This is the third reason why the writ of certiorari should be granted.

CONCLUSION

It is not so much the rights of a United States citizen as it is much more the Constitution and laws of the United States which created the same rights for all United States citizens that are at issue. If the Constitution and laws of the United States have no supreme force and effect not only to sustain themselves, but also to ensure that their requirements are carried out accordingly, then, the rights that the Constitution and laws of the United States created for United States citizens have no meaning in substance. The Constitution and laws of the United States require both the federal courts and the state courts, including the Tennessee Supreme Court, to review federal questions, among others, arising under the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

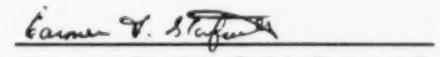
Where, as in the present case, the Tennessee Supreme Court refuses to carry out the requirements of the Constitution and laws of the United States by denying the petition to review a Fourteenth Amendment and a 42 U.S.C. § 1983 federal question, even though Tenn. Code Ann. 16-3-403 prohibited the violation by the Tennessee Supreme Court of substantive rights created by the Constitution and laws of the United States, and Tenn. Code Ann. 27-8-101 authorized the Tennessee Supreme Court to review federal claims arising from federally unlawful and illegal actions by the board of law examiners of Tennessee, then, the Tennessee Supreme Court not only challenged the supremacy of the Constitution and laws of the United States by blatantly and flagrantly violating them, but also established a federally unlawful precedent for the other 49 state judicial systems to follow in violation of the Constitution and laws of the United States.

A review by the United States Supreme Court of the Tennessee Supreme Court's denial of a petition to review a federal question is as nationally substantial as nationally establishing

the supremacy of the Constitution and laws of the United States to give substantive meaning to the rights created and protected by the Constitution and laws of the United States.

Therefore, the petitioner prays the Supreme Court of the United States to grant the writ of certiorari in the present case.

Respectfully submitted,



Carmen R. Stanfield, B.A., J.D.
For the Petitioner
P. O. Box 5688
Nashville, Tennessee 37208
(615) 327-1959

AFFIDAVIT OF SERVICE

State of Tennessee

SS:

County of Davidson

I, Carmen R. Stanfield, depose and say that I am the petitioner in the foregoing case, and that on April 11 , 1990, pursuant to Rule 28.5(c), Rules of the United States Supreme Court, I served three (3) copies of the foregoing "Petition for Writ of Certiorari," consisting of twenty-nine (29) pages, along with a 136-page appendix, on each of the parties required to be served herein as follows:

On Betty W. Horn, Charles W. Burson, Lowry F. Kline and H. Lee Barfield, II, the respondents herein, by mailing the three (3) copies in a duly addressed envelope, with first class postage prepaid, to Charles L. Lewis, counsel of record for the aforementioned respondents at the address of: Office of the Attorney General, 450 James Robertson Parkway, Nashville, Tennessee 37219-5025.

All parties required to be served have been served.

Carmen R. Stanfield

Subscribed and sworn to before me on April 10, 1990.

APPENDIX

Page

A. Court Order Sought to be Reviewed

In the Supreme Court of Tennessee
at Nashville

Carmen R. Stanfield,
Plaintiff-Petitioner,

v.

Betty W. Horn,
Charles W. Burson,
Lowry F. Kline,
and H. L. Barfield, II,
Defendants-Respondents.

Filed March 1, 1990

A. B. Neil, Jr., Clerk

Order

On January 11, 1990, the petitioner, Carmen R. Stanfield, filed a petition in this Court concerning her failure of the February, 1987 Tennessee bar examination.[a] The petitioner

[a]On January 11, 1990, the petitioner, Carmen R. Stanfield, filed in this Court a "Petition for Review of the Federal Constitutionality of the Respondents' Test Score Fraud and Actions Under and §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 that Violated the Petitioner's Rights Created and Protected by the Constitution, Statutes and Case Law of the United States." In this case, state public officials, Charles W. Burson, et al., committed a test score fraud against the petitioner, Carmen R. Stanfield; but, since Charles W. Burson, et al., as members of the state board of law examiners, were appointed and supervised by the members of the Tennessee Supreme Court, the Tennessee Supreme Court issued the above cited one-page per curiam order to deny the petitioner, Carmen R. Stanfield, a fair and impartial hearing: (1) to review the federal constitutionality of §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 that violated the petitioner's rights created and protected by the Constitution, statutes and case law of the United States and (2) to review the federal constitutionality of the respondents' test score fraud and actions under color of state law, in this case, §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7, that violated the petitioner's rights created and protected by the Constitution, statutes and case law of the United States. The plaintiff asserts that the term "test score fraud," as used in this case, means the fraudulent use by state public official(s), publicly entrusted with the

requested damages, declaratory relief and injunctive relief against various officers of the Tennessee board of law examiners. On January 24, 1990, the petitioner filed a 240-page memorandum in support of her petition. On February 12, 1990, respondents filed a motion to dismiss the petition.

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exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidate based on the test papers and the test answers of the licensing candidate, through the commission of nonfeasance, not reporting the actual passing test scores meritoriously earned by the licensing candidate, misfeasance and/or malfeasance, reporting adverse test scores to be relied on by the licensing candidate, in making any type of false test score report abuses the public trust of their public office(s): (1) to publish licensing rules that cause licensing candidates to rely on a "passing test score criteria" and then (2) to wrongfully defraud the licensing candidate of the meritoriously earned "passing test scores" earned by the licensing candidate by using, instead of the meritoriously earned passing test scores earned by the licensing candidate, an unpublished discriminatory criteria based on race, sex, creed, religious beliefs, political affiliation, national origin, ethnic origin, which not only fraudulently denies the licensing candidate the license based on the passing test scores, but also denies the licensing candidate an equal employment opportunity in the profession being licensed. The plaintiff further asserts that upon any such timely charge made by any licensing candidate against any state public official(s) who make(s) an official statement eminating from the office of the state public official(s) that any licensing candidate has not met the "passing test score criteria", the burden of proof shifts to the state public official(s), publicly entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidate based on the test papers and the test answers of the licensing candidate, to show: 1) any and all test questions and any and all corresponding explanations of the invariable test answers used by the state public official(s) to deny the licensing candidate not only the license, but also an equal employment opportunity in the profession being licensed and 2) the job-relatedness, i.e., the statistical relationship between any and all test questions and any and all corresponding test answers used by the state public official(s) to deny the licensing candidate not only the license, but also an equal employment opportunity in the profession being licensed, on the one hand, and successful performance on the job within the profession being licensed, on the other hand, through any one or more of the following three test-validation criteria: a) incontrovertible proof of the criterion-related validity of any and all test questions and all corresponding explanations of the invariable test answers used by the state public official(s) to deny the licensing candidate not only the license, but also an equal employment opportunity in the profession being licensed, (e.g., a statistical relationship between scores based on any and all of the professional examination questions and all corresponding explanations of the invariable test answers, on the one hand, and measures of job performance in any work in the profession being licensed, on the other hand), and/or b) incontrovertible proof of the content-validity of any and all test questions and all corresponding explanations of the invariable test answers used by the state public official(s) to deny the licensing candidate not only the license, but also an equal employment opportunity in the profession being licensed, (e.g., proof that any and all of the professional examination questions and all corresponding explanations of the invariable test answers represen-

Upon consideration of the petition and the response by the respondents, this Court is of the opinion that the petition filed by Carmen R. Stanfield should be denied. It is therefore ordered, adjudged and decreed that the petition for review, having been considered, is accordingly denied.

This 1st day of March, 1990.

Per curiam

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tatively sample significant parts of any job in the profession being licensed), and/or, c) incontrovertible proof of the construct-validity of any and all test questions and all corresponding explanations of invariable test answers used by the state public official(s) to deny the licensing candidate not only the license, but also an equal employment opportunity in the profession being licensed, (e.g., proof of the identification and measurement of the presence and degree of the trait or construct which underlies successful performance on any job in the profession being licensed). The rationale for this shift in the burden of proof is to ensure that state public official(s), publicly entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidate based on the test papers and the test answers of the licensing candidate, through the commission of nonfeasance, misfeasance, and/or malfeasance in making any type of false test score report do(es) not abuse the public trust of their public office(s): (1) to publish licensing rules that licensing candidates must meet a "passing test score criteria" and then (2) to wrongfully defraud the licensing candidate of the meritoriously earned "passing test scores" earned by the licensing candidate by using, instead of the meritoriously earned passing test scores earned by the licensing candidate, an unpublished discriminatory criteria based on race, sex, creed, religious beliefs, political affiliation, national origin, ethnic origin, or any other subjective, discriminatory unpublished criteria under color of state law which not only fraudulently denies the licensing candidate the license based on the passing test scores, but also fraudulently denies the licensing candidate an equal employment opportunity in the profession being licensed. Where the state public official(s) meet(s) this shifted burden of proof, the licensing candidate is allowed a fair and reasonable opportunity to rebut.

B. Plaintiff's Complaint

In the United States District Court
For the Middle District of Tennessee
Nashville Division

Carmen R. Stanfield,
Plaintiff,

v.

Betty W. Horn,
(employed as Administrator,
Board of Law Examiners of
Tennessee),

Charles W. Burson,
(employed as President,
Board of Law Examiners of
Tennessee),

Lowry F. Kline,
(employed as Vice-President,
Board of Law Examiners of
Tennessee),

H. Lee Barfield, II,
(employed as Secretary-
Treasurer, Board of Law
Examiners of Tennessee),

Filed

February 25, 1988

Civil Action Number
3 88 0168

PLAINTIFF'S COMPLAINT

Jurisdiction and Venue

1. The jurisdiction of this Court under 28 U.S.C. § 1331

(1983)(federal question) and 28 U.S.C. § 1343(a)(3) and (4) (1983)(civil rights) is respectfully invoked by the plaintiff in the present case for this Court in behalf of the plaintiff to secure for the plaintiff protection from the deprivation and violation by the defendants in the present case of the plaintiff's rights and to obtain for the plaintiff redress from the defendants for the deprivation and violation of the plaintiff's rights secured, guaranteed and protected by: (a) the equal protection of the law, the procedural due process of law and the substantive due process of law provisions of the Fourteenth Amendment of the United States Constitution, (b) §§ 703(b) and 704(a), Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) prohibiting violation of the civil rights of United States citizens, (c) 42 U.S.C. § 1983 (1983) authorizing redress for the deprivation and violation of the rights of United States citizens under color of law and (d) 42 U.S.C. § 1988 (1983) The Civil Rights Attorney's Fees Awards Act of 1976 authorizing award for the payment by the defendants of the fees for the plaintiff's attorney in a civil rights lawsuit.

2. The unlawful deprivation and violation of the plaintiff's rights complained of in this case were, and still are being, committed by the defendants against the plaintiff within the Middle District, Nashville Division, of the State of Tennessee.

Parties

3. Plaintiff, Carmen R. Stanfield, is a natural born female citizen of the United States and a resident of the city of Nashville, Nashville-Davidson County, in the State of Tennessee.

4. Defendants, Betty W. Horn, Charles W. Burson, Lowry F. Kline, and H. Lee Barfield, II, are employees of the Board of Law Examiners of Tennessee whose office is located at 401 Church Street in the city of Nashville, Nashville-Davidson County, in the State of Tennessee.

5. In May, 1986, by use of a telephone, the plaintiff called the defendants expressing the plaintiff's intent to take the February, 1987, Tennessee bar examination and requesting the defendants to send the plaintiff an application together with all the necessary information for the February, 1987, Tennessee bar examination.

6. In September, 1986, the defendants sent the plaintiff an application form together with a brochure and a notice of intent form.

7. By means of the contents of the brochure, the defendants informed the plaintiff that the defendants were authorized by the Supreme Court of the State of Tennessee, among other related rules of authorization, to conduct the Tennessee bar examination under Rule 7, Articles 1 through 14, in general, and in particular, Article 13, Section 2(a) and Article 14, Section 4 of the Supreme Court of the State of Tennessee as set forth in detail in Appendix A.2 and A.3 hereunto attached.

8. By means of the contents of the brochure, the defendants informed the plaintiff that not only did the defendants in advance fully know and in practice fully adhere, among other related rules of authorization, to Rule 7, Articles 1 through 14, in general, and in particular, Article 13, Section 2(a) and Article 14, Section 4 of Rule 7 of the Supreme Court of the State of Tennessee in thinking of and acting on the Tennessee bar examination, but also that the thoughts, actions and the adverse effects, impacts and consequences of the thoughts and actions of the defendants relative to the bar examination and the bar candidates were, and still are, authorized and protected by Rule 7, Articles 1 through 14, in general, and in particular, Article 13, Section 2(a) and Article 14, Section 4 of Rule 7 of the Supreme Court of the State of Tennessee.

9. On September 26, 1986, the plaintiff completed and

mailed the notice of intent form along with a personal check number 112 in the amount of $25.00 to the defendants which the defendants acknowledged as received by the defendants on September 30, 1986.

10. On November 12, 1986, the plaintiff completed and mailed the application form along with a personal check number 121 in the amount of $350.00 to the defendants which the defendants acknowledged as received by the defendants on November 14, 1986.

11. On February 5, 1987, the defendants not only informed the plaintiff of their approval of the plaintiff to take the February, 1987, Tennessee bar examination on February 25 and 26, 1987, and of the fact that the test scores on the February, 1987, Tennessee bar examination would be received by the plaintiff not later than April 15, 1987, but also informed the plaintiff that 135 out of 200 correct answers constituted the least passing test scores on the multistate portion of the February, 1987, Tennessee bar examination given on Wednesday, February 25, 1987, and that seven (7) out of twelve (12) correct answers constituted the least passing test scores on the essay portion of the February, 1987, Tennessee bar examination given on Thursday, February 26, 1987.

12. On February 25, 1987, the plaintiff duly arrived at 8:15 a.m. in the Jane Elliott Hall located at 37th Avenue and John A. Merrit Boulevard on the main campus of Tennessee State University to take the Tennessee bar examination. But the defendants could not permit the plaintiff to sit and take the examination before the defendants had authoritatively and completely satisfied themselves in obtaining from the plaintiff full information of the plaintiff's physical identification, name, race and sex to use in deciding and acting upon the plaintiff's test papers and test scores on the February, 1987, Tennessee bar examination.

12.1. The defendants had in their hands a roster containing

the names of the February, 1987, class of Tennessee bar candidates. The plaintiff, who was the first in a line containing approximately ten (10) members of the February, 1987, class of Tennessee bar candidates who had arrived to sit and take the bar examination, approached the defendants with the roster containing the names of the February, 1987, class of Tennessee bar candidates. The defendants authoritatively demanded from the plaintiff an identification not only showing the plaintiff's name but also the plaintiff's photo that corresponded not only with the plaintiff's physical appearance but also with the plaintiff's name on the roster of names held by the defendants.

12.2. The plaintiff presented to the defendants the plaintiff's identification card containing the plaintiff's name and photo. The defendants (a) physically obtained from the plaintiff the plaintiff's identification card, (b) carefully observed the plaintiff's name as Carmen R. Stanfield on the plaintiff's identification card, (c) carefully observed the plaintiff's face, color and sex on the plaintiff's identification card as a black and a female, (d) carefully compared the plaintiff's photo showing the plaintiff's race and sex as a black and a female with the plaintiff's physical appearance as a black and a female, (e) carefully noted the exactness between the plaintiff's photo showing the plaintiff's race and sex as a black and a female and the plaintiff's physical appearance showing the plaintiff's race and sex as a black and a female, (f) carefully compared the plaintiff's name on the plaintiff's identification card showing Carmen R. Stanfield with the plaintiff's name on the roster containing the names of the February, 1987, class of Tennessee bar candidates showing Carmen R. Stanfield located among the names bearing the "S" series towards the end of the page, (g) deliberately, willfully and intentionally decided and acted in a nervous, trembling and covering-up manner to mark, and did mark, some identification near the plaintiff's name noting the race and sex of the plaintiff which gave the plaintiff not only reason to wonder at the

nervous, trembling and weird behavior of the defendants in nervously covering-up and writing the identification mark which the defendants wrote near the plaintiff's name, but also reason to suspect that the defendants had some adverse ulterior motive against the plaintiff.

12.3. The defendants gave the plaintiff a card showing an assigned seat number and an unsealed envelope not only containing an assigned examination number for the plaintiff, but also indicating the fact that in advance the defendants knew the plaintiff's examination number. Immediately after the examination, and as requested by the defendants, the plaintiff mailed the plaintiff's examination number to the defendants for use by the defendants in deciding and acting upon the plaintiff's test papers and test scores on the February, 1987, Tennessee bar examination.

12.4. At the end of the second day of the February, 1987, Tennessee bar examination, the defendants had in their possession complete information concerning (a) the plaintiff's physical appearance showing the plaintiff's race and sex, (b) the plaintiff's name showing Carmen R. Stanfield, (c) the plaintiff's race showing a black, (d) the plaintiff's sex showing a female, (e) the plaintiff's examination number showing 01093, and (f) the plaintiff's examination containing a 24-page essay on 8 1/2" x 14" legal size pages, a 2-page answer for each of the 12 essay questions, constituting the essay portion of the February, 1987, Tennessee bar examination, and 200 answers to 200 multistate questions constituting the multistate portion of the February, 1987, Tennessee bar examination.

12.5. On February 25, 1987, the date on which the multistate portion was given, the plaintiff answered all the 200 multistate questions with high-scoring passing answers that could not fail to meritoriously earn for the plaintiff at least 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination. [The plaintiff earned at least 175

correct answers on the multistate portion without scaling the multistate scores due to faulty multistate questions with more than one correct answer; and, hence the plaintiff may have earned more than 175 correct answers on the multistate portion.]

12.6. On February 26, 1987, the date on which the essay portion was given, the plaintiff answered all the twelve (12) essay questions on 24 8 1/2" x 14" legal size pages, a 2-page answer for each of the twelve (12) essay questions, with high-scoring passing answers that could not fail to meritoriously earn for the plaintiff at least nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination. [The plaintiff earned at least 9 correct answers on the essay portion without scaling the essay scores due to faulty essay questions with more than one correct answer; and, hence the plaintiff may have earned more than 9 correct answers on the essay portion.]

13. From February 25, 1987, up to and including April 11, 1987, and still up to the date of this complaint, the defendants through their policy decisions and actions, under the authorization and protection of Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Tennessee Supreme Court Rule 7, Article 14, Section 4, in the administration of the February,1987, Tennessee bar examination in general, and in particular, in racially marking and identifying the plaintiff's name, examination number, examination papers, reading and grading the plaintiff's examination papers, deciding and acting upon the plaintiff's test scores and recording and reporting the plaintiff's test scores on the February, 1987, Tennessee bar examination committed, and continued to commit, against the plaintiff the acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice, first, when the defendants in using the racially marked and identified name, race, sex, examination number and examination papers of the plaintiff deliberately, willfully and inten-

tionally defrauded the plaintiff of nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, and second, when the defendants in using the racially marked and identified name, race, sex, examination number and examination papers of the plaintiff deliberately, willfully, intentionally, fraudulently, deceptively, arbitrarily, capriciously, discriminatorily and imposingly lied to the plaintiff in two (2) empty-worded letters of April 11, 1987, concerning the plaintiff's test scores on the essay portion of the February, 1987, Tennessee bar examination.

13.1. In the first of their two (2) empty-worded letters of April 11, 1987, written by and under the names of three (3) of the defendants in the present case, employed as members of the board of law examiners, in which no quantified test scores earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination were enclosed, while the defendants made no mention of any failure by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, or cited and enforced against the plaintiff no "Statement of Practice Regarding Results of Multistate Examinations," [meaning in effect that the plaintiff successfully passed the multistate portion of the February, 1987, Tennessee bar examination] the defendants not only authoritatively, fraudulently, deceptively, arbitrarily, capriciously, discriminatorily and imposingly lied to the plaintiff that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination, but also authoritatively, fraudulently, deceptively, arbitrarily, capriciously, discriminatorily and imposingly cited and enforced against the plaintiff the defendants' "Statement of Practice Regarding Results of Essay Examination," authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a) in these words:

> "It is the practice of the board that neither the members of the board nor any of the assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination."

13.2. In the second of their two (2) empty-worded letters of April 11, 1987, written by and under the name and signature of Betty W. Horn, one of the defendants in the present case, employed as administrator of the board of law examiners, which contained no quantified test scores earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, the defendants authoritatively, fraudulently, deceptively, arbitrarily, capriciously, discriminatorily and imposingly cited and enforced against the plaintiff the defendants' policies and practices authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 14, Section 4:

> ("There is no provision in the Rule for review of examination papers by the applicant,"
>
> "The next bar examination will be given July 29 and 30, 1987....file the enclosed notice of intent and remit the $25.00 application fee no later than April 30, 1987,")

by authoritatively, fraudulently, deceptively, arbitrarily, capriciously, discriminatorily and imposingly ordering the plaintiff, without the plaintiff's seeing the plaintiff's test papers and test scores on the first Tennessee bar examination and without the plaintiff's having an opportunity in a hearing to see, examine,

understand, know and contest the facts of the alleged failure on the essay portion of the first Tennessee bar examination, to pay to the defendants $25 as notice of intent fees, to be followed later by payment of more money, to sign and return to the defendants a notice of intent form, and then to take a second Tennessee bar examination to be given by the defendants.

14. On April 14, 1987, as set forth in detail in Appendix A.4 hereunto attached, the plaintiff challenged the defendants to produce documentary evidence that can prove by irrefutable facts the defendants' allegation that the plaintiff earned no passing scores on the essay portion of the February, 1987, Tennessee bar examination. In the expectation that the defendants who are the practitioners and the examiners of legal professional responsibility required of bar candidates in Tennessee would in the exemplification of legal professional responsibility produce documentary evidence not only for both the defendants and the plaintiff to examine the irrefutable facts explaining and substantiating the allegation of a failure on the essay portion of the February, 1987, Tennessee bar examination, but also for the plaintiff to see, understand, know and avoid the contested and irrefutably proven facts of the alleged failure in a subsequent bar examination, the plaintiff conditionally forwarded to the defendants a personal check number 126 in the amount of $25 as fees together with a signed notice of intent form to take a second Tennessee bar examination as authoritatively required, demanded and ordered by the defendants in keeping with their decisions, actions, policies and practices authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Tennessee Supreme Court Rule 7, Article 14, Section 4. But in continuing to commit against the plaintiff the acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice, the defendants not only deliberately, willfully and intentionally decided and acted upon the decision to fraudu-

lently, deceptively, arbitrarily, capriciously and discriminatorily cover-up, conceal and hide from the plaintiff the nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, but also to deliberately, willfully and intentionally decide and act upon the decision to fraudulently, deceptively, arbitrarily, capriciously and discriminatorily refuse to comply with the plaintiff's request for irrefutable facts explaining and substantiating the defendants' allegation of a failure by the plaintiff to pass the essay portion of the February, 1987, Tennessee bar examination.

15. On April 17, 1987, the defendants' failure to respond to the plaintiff's request of April 14, 1987, caused the plaintiff, as set forth in detail in Appendix A.9 hereunto attached, to further challenge the defendants to produce documentary evidence on the essay portion of the February, 1987, Tennessee bar examination not only for both the defendants and the plaintiff to examine the irrefutable facts explaining and substantiating the defendants' allegation of a failure by the plaintiff to pass the essay portion of the February, 1987, Tennessee bar examination, but also for the plaintiff to see, understand, know and avoid the contested and irrefutably proven facts of the alleged failure in a subsequent bar examination. But in continuing to commit against the plaintiff the acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice, the defendants not only deliberately, willfully and intentionally decided and acted upon the decision to fraudulently, deceptively, arbitrarily, capriciously and discriminatorily cover-up, conceal and hide from the plaintiff the nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, but also to deliberately, willfully and intentionally decide and act upon the decision to fraudulently, deceptively, arbitrarily, capriciously and discrimi-

natorily refuse to comply with the plaintiff's request for irrefutable facts explaining and substantiating the defendants' allegation of a failure by the plaintiff to pass the essay portion of the February, 1987, Tennessee bar examination.

16. From April 14, 1987, up to and including April 22, 1987, and still up to the date of this complaint, the defendants, in continuing through their policy decisions, actions and practices under the authorization and protection of Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Tennessee Supreme Court Rule 7, Article 14, Section 4, in the administration of the February, 1987, Tennessee bar examination in general, and in particular, in racially marking and identifying the plaintiff's name, examination number, examination papers, reading and grading the plaintiff's examination papers, deciding and acting upon the plaintiff's test scores, and recording and reporting the plaintiff's test scores on the February, 1987, Tennessee bar examination to commit against the plaintiff the acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice, deliberately, willfully and intentionally decided and acted upon the decision not only to regard the plaintiff's request for facts from the defendants as grounds and causes for vindictiveness and retaliation against the plaintiff, but also to vindictively retaliate against the plaintiff, first, by vindictively and retaliatively defrauding the plaintiff of 175 out of 200 correct answers meritoriously earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, second, eleven (11) days after the defendants' letter of April 11, 1987, in which no failure on the multistate portion of the February, 1987, Tennessee bar examination was reported to the plaintiff, by vindictively and retaliatively informing the plaintiff that the plaintiff earned no passing test scores on the multistate portion of the February, 1987, Tennessee bar examination, and third, by vindictively and retaliatively covering-up, concealing

and hiding from the plaintiff the 175 out of 200 correct answers meritoriously earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination.

17. On April 23, 1987, in response to the defendants' vindictive retaliation against the plaintiff by defrauding the plaintiff of 175 out of 200 correct answers meritoriously earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, and the defendants' continued refusal to comply with the plaintiff's persistent and repeated requests for documentary evidence to prove by irrefutable facts the defendants' allegation that the plaintiff earned no passing scores on the essay portion of the February, 1987, Tennessee bar examination, the plaintiff, as set forth in detail in Appendix A.18 hereunto attached, filed against the defendants a complaint with the United States Commission on Civil Rights for violation of the plaintiff's civil rights in deciding, acting upon and reporting the plaintiff's test scores on the February, 1987, Tennessee bar examination.

18. After filing the complaint against the defendants on April 23, 1987, the defendants, on April 24, 1987, forwarded the plaintiff two sheets of paper. While one of the two sheets of paper proved the defendants deliberately, willfully, intentionally and fraudulently lied to the plaintiff (in the defendants' letter of April 11, 1987, containing the defendants' lie that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination) by showing eight (8) of the nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, although the defendants were still withholding, covering-up, concealing and hiding from the plaintiff one more correct answer meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, the other sheet of paper proved the defendants deliberately, willfully, intentionally and fraudulently lied to the

plaintiff (in the defendants' vindictive and retaliative letter of April 22, 1987, containing the defendants' vindictive and retaliative lie that the plaintiff earned no more than 123 correct answers, and hence the plaintiff earned no passing test scores on the multistate portion of the February, 1987, Tennessee bar examination by showing two reduced test scores of 170 out of 200 correct answers and 123 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination, proving the defendants' vindictive and retaliative reduction of the plaintiff's test scores by five (5) in the first instance (175 - 5 = 170) and by fifty-two (52) in the second instance (175 - 52 = 123) since the defendants in their letter of April 11, 1987, reported no failure by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, and plaintiff maintained meritoriously earning at least 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination.

19. On April 27, 1987, the plaintiff, as set forth in detail in Appendix A.27 hereunto attached, served notice on the defendants to the effect that as of April 11, 1987, it was factually and legally an irreversible fact that the plaintiff meritoriously earned passing test scores on the multistate portion of the February, 1987, Tennessee bar examination and that the plaintiff intended, following administrative exhaustion, to sue the defendants in a federal court for the deprivation and violation of the plaintiff's civil rights by the defendants in the administration of the February, 1987, Tennessee bar examination.

20. On April 29, 1987, the plaintiff, as set forth in detail in Appendix A.33 hereunto attached, requested in writing the defendants to refund the plaintiff's $25 notice of intent fees since the defendants refused to comply with the plaintiff's requests for facts to prove the defendants' allegation that the plaintiff earned no passing test scores on the February, 1987, Tennessee bar examination and existing evidence proved the plaintiff merito-

riously passed both the multistate and essay portions of the February, 1987, Tennessee bar examination, meaning no need for the plaintiff to take a second Tennessee bar examination, but the defendants refused to refund the plaintiff's $25.

21. On May 13, 1987, the defendants in a letter under the name and signature of Betty W. Horn, one of the defendants in the present case, wrote to inform the plaintiff that the defendants were willing to increase the plaintiff's test scores on the essay portion of the February, 1987, Tennessee bar examination from eight (8) correct answers to nine (9) correct answers provided, however, that the plaintiff without any objective evidence in advance agrees that the plaintiff earned no passing scores on the multistate portion of the February, 1987, Tennessee bar examination.

22. On June 18, 1987, the United States Commission on Civil Rights wrote the plaintiff, as set forth in detail in Appendix A.35 hereunto attached, to say that the plaintiff's complaint had been sent to the United States Department of Education for appropriate action.

23. On July 18, 1987, the United States Department of Education in Region IV wrote to inform the plaintiff, as set forth in detail in Appendix A.37 hereunto attached, that because the federal government does not fund the activities of the Board of Law Examiners of Tennessee the Department of Education is without the legal authority to act upon the plaintiff's complaint.

24. On this date of the complaint [February 25, 1988], the plaintiff filed this lawsuit in the United States District Court for the Middle District of Tennessee, Nashville Division, in order for the plaintiff to recover from the defendants (a) the plaintiff's meritoriously earned test scores of nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination, (b) the plaintiff's meritoriously earned test scores of 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar exami-

nation, (c) the plaintiff's meritoriously earned "employment opportunity" as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the February, 1987, Tennessee bar examination, (d) the plaintiff's meritoriously earned certification and license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the February, 1987, Tennessee bar examination, (e) the plaintiff's $25 and (f) $10,000,000.00 in compensatory civil damages and $10,000,000.00 in punitive civil damages both for the defendants' deprivation and violation of the plaintiff's civil rights in the administration of the February, 1987, Tennessee bar examination.

Statement of Law

25. [As set forth in the plaintiff's 240-page memorandum of law for the court[1] filed along with the plaintiff's complaint on February 25, 1988], Tennessee Supreme Court Rule 7, Article

[1]Tennessee Supreme Court Rule 7, Article 13, Section 2(a), states that: "Petitions to board. Any person who is aggrieved by any action of the board involving or arising from the enforcement of this rule (other than failure to pass the bar examination) may petition the board for such relief as is within the jurisdiction of the board to grant." As admitted and shown by its own wordings, Tennessee Supreme Court Rule 7, Article 13, Section 2(a), foresaw the fact, as in the present case, that the defendants in the administration and enforcement of the aforementioned rule could in the practice of racism, sexism, discrimination, imposition, fraud, deception, vindictiveness, retaliation, arbitrariness, capriciousness, manifest unfairness and injustice injure any number of persons among the Tennessee bar candidates, including the plaintiff, against whom the defendants were authorized and protected to administer and enforce the aforementioned rule.

Based on this fact, the aforementioned rule granted in advance the right to petition for redress to some of the members of the same class of Tennessee bar candidates, citizens of the United States and the State of Tennessee, for injury committed against them by the defendants, but at the same time, the aforementioned rule denied in advance some members of the same class of Tennessee bar candidates, also citizens of the United States and the State of Tennessee, the right to petition for redress for injury committed against them by the defendants. In so doing, Tennessee Supreme Court Rule 7, Article 13, Section 2(a), not only discriminated against some citizens of the United States and the State of Tennessee who were members of the same class of Tennessee bar candidates, but also denied them equal protection of the law, in this case, Tennessee Supreme Court Rule 7, Article 13, Section 2(a).

13, Section 2(a), in authorizing and protecting the defendants to act adversely against the plaintiff in the administration of the February, 1987, Tennessee bar examination, is inherently and practically unconstitutional since it denied the plaintiff the right to equal protection of the law in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

26. [As set forth in the plaintiff's 240-page memorandum of law for the court[2] filed along with the plaintiff's complaint on February 25, 1988], the defendants' administrative decisions,

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In the present case, the plaintiff was a member of the February, 1987, class of Tennessee bar candidates consisting of about 100 persons who were citizens of the United States and the State of Tennessee. While Tennessee Supreme Court Rule 7, Article 13, Section 2(a), granted in advance some aggrieved members of the February, 1987, class of Tennessee bar candidates the right to petition the defendants for redress for injury committed against them by the defendants, the aforementioned rule in advance discriminated against and denied the plaintiff, an aggrieved member of the February, 1987, class of Tennessee bar candidates, the right to petition the defendants for redress for injury committed against the plaintiff by the defendants. In so doing, the aforementioned rule denied plaintiff the right to equal protection of the law which is prohibited by the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws."

[2]Not only as students of the Constitutional and statutory laws of the United States and as licensed and practicing attorneys-at-law who swore to uphold and defend the Constitutional and statutory laws of the United States, but also as the test writers for and the examiners of Tennessee bar candidates' knowledge of the Constitutional and statutory laws of the United States, the defendants had advance and full knowledge of the equal protection clause of the Fourteenth Amendment of the United States Constitution when the defendants gave the February, 1987, Tennessee bar examination to the February, 1987, class of Tennessee bar candidates of whom the plaintiff was a member.

Moreover, at least from May, 1986, up to and including February, 1987, the defendants had advance and full knowledge that Tennessee Supreme Court Rule 7, Article 13, Section 2(a), which, on the one hand, granted in advance legal protection to some members of one class of Tennessee bar candidates who were citizens of the United States and the State of Tennessee and, on the other hand, denied in advance equal legal protection to some members of the same class of Tennessee bar candidates who were equally citizens of the United States and the State of Tennessee at the time when the defendants gave the February, 1987, Tennessee bar examination to the February, 1987, class of Tennessee bar candidates of whom the plaintiff was a member.

The defendants had advance and full knowledge of the conflict between the equal protection clause of the Fourteenth Amendment of the United States Constitution, on the one hand, and Tennessee Supreme Court Rule 7, Article 13, Section 2(a), on the

actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a) adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they denied the plaintiff the right to equal protection of the law in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

27. [As set forth in the plaintiff's 240-page memorandum of law for the court[3] filed along with the plaintiff's complaint on February 25, 1988], Tennessee Supreme Court Rule 7, Article 13, Section 2(a), in authorizing and protecting the defendants to

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other hand, and yet the defendants chose to enforce the latter against the plaintiff. ...the defendants in so deciding and acting against the plaintiff committed a flagrant and blatant violation of the plaintiff's right to equal protection of the law secured for and guaranteed the plaintiff by the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws." Indeed, the defendants enforced against the plaintiff Tennessee Supreme Court Rule 7, Article 13, Section 2(a) which denied to the plaintiff within the jurisdiction of the State of Tennessee the equal protection of the law, in this case, Tennessee Supreme Court Rule 7, Article 13, Section 2(a).

[3]As admitted and shown by its own wordings, Tennessee Supreme Court Rule 7, Article 13, Section 2(a), foresaw the fact, as in the present case, that the defendants in the administration and enforcement of the aforementioned rule not only could in the practice of racism, sexism, discrimination, imposition, fraud, deception, vindictiveness, retaliation, arbitrariness, capriciousness, manifest unfairness and injustice injure any number of persons among the Tennessee bar candidates against whom the defendants were authorized and protected to administer and enforce the aforementioned rule, but also in so doing could necessitate the need to afford such injured persons among the Tennessee bar candidates fundamental fairness inherent in and required by the right to hear the other side. Based on this fact, the aforementioned rule granted in advance the right to a fair hearing to some of the members of the same class of Tennessee bar candidates to adjudicate the issues of the injury committed against them by the defendants, but at the same time, Tennessee Supreme Court Rule 7, Article 13, Section 2(a), deprived some members of the same class of Tennessee bar candidates the right to a fair hearing to adjudicate the issues of the injury committed against them by the defendants. In so doing, Tennessee Supreme Court Rule 7, Article 13, Section 2(a), not only discriminated against some citizens of the United States and the State of Tennessee who were members of the same class of Tennessee bar candidates, but also deprived them of the fundamental fairness inherent in and required by due process of law prohibited by the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deprive any person of...due process of law..."

act adversely against the plaintiff in the administration of the February, 1987, Tennessee bar examination, is inherently and practically unconstitutional since it deprived the plaintiff of the right to procedural due process of law in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

28. [As set forth in the plaintiff's 240-page memorandum of law for the court[4] filed along with the plaintiff's complaint on February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the right to procedural due process of law in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

29. [As set forth in the plaintiff's 240-page memorandum of law for the court[5] filed along with the plaintiff's complaint on

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[4]After committing against the plaintiff the illegal acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice, and defrauding the plaintiff of nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, the defendants not only deliberately, willfully, intentionally and fraudulently lied to the plaintiff by falsely reporting to the plaintiff that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination, but also simultaneously with advance and full knowledge of and acting upon the authorization and protection of Tennessee Supreme Court Rule 7, Article 13, Section 2(a), in advance deliberately, willfully and intentionally refused to give the plaintiff a hearing not only for both the defendants and the plaintiff to examine the irrefutable facts explaining and substantiating the allegation of the failure to pass the essay portion, but also for the plaintiff to know and avoid the contested and irrefutably proven facts of the failure in a subsequent examination. In so deciding and acting against the plaintiff, the defendants not only deliberately, willfully and intentionally discriminated against, but also deprived the plaintiff of the right to fundamental fairness inherent in and required by the right to procedural due process of law secured for and guaranteed the plaintiff as a citizen of the United States by the due process clause of the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deprive any person of...due process of law..."

[5]Tennessee Supreme Court Rule 7, Article 14, Section 4, states that: "No Review

February 25, 1988], Tennessee Supreme Court Rule 7, Article 14, Section 4, in authorizing and protecting the defendants to act adversely against the plaintiff in the administration of the February, 1987, Tennessee bar examination, is inherently and practically unconstitutional since it deprived the plaintiff of the right to procedural due process of law in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

30. [As set forth in the plaintiff's 240-page memorandum of law for the court[6] filed along with the plaintiff's complaint on

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of Failure to Pass Bar Examination. The only remedy afforded for a grievance for failure to pass bar examination shall be the right to reexamination as herein provided." While Tennessee Supreme Court Rule 7, Article 13, Section 2(a), informed the plaintiff that the plaintiff had no right to a fair hearing to adjudicate the factual issues of the alleged "failure to pass" the essay portion of the February, 1987, Tennessee bar examination, the latter informed the plaintiff that the only remedy the plaintiff had was to pay more money to the defendants for a second Tennessee bar examination and to take a second Tennessee bar examination, first, with no regard, on the part of the defendants, to the necessity for the plaintiff to know and rebut the substantive facts explaining the alleged "failure to pass" the first Tennessee bar examination, and, second, with no regard, on the part of the defendants, to the necessity for the plaintiff to know the existence of a rule of law to ensure (a) that the defendants would not in an endless cycle defraud the plaintiff of the plaintiff's earned passing scores and in an endless cycle cheat and lie to the plaintiff in reporting to the plaintiff that the plaintiff earned no passing scores on successive Tennessee bar examinations up to the cutoff number of times for taking the Tennessee bar examination, (b) that Tennessee Supreme Court Rule 7, Article 13, Section 2(a), would not create for the plaintiff an endless cycle of the deprivation of the plaintiff's right to procedural due process of law, and (c) that Tennessee Supreme Court Rule 7, Article 14, Section 4, would not create for the plaintiff an endless cycle of demand upon the plaintiff for the payment of money to the defendants for an endless cycle of Tennessee bar examinations, up to the cutoff number of times for taking the Tennessee bar examination.

In so doing, like Tennessee Supreme Court Rule 7, Article 13, Section 2(a), Tennessee Supreme Court Rule 7, Article 14, Section 4, deprived the plaintiff of the right to procedural due process of law secured for and guaranteed the plaintiff by the due process clause of the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deprive any person of...due process of law..."

[6]With advance and full knowledge, and acting under the authorization and protection of Tennessee Supreme Court Rule 7, Article 14, Section 4, in the month of April, 1987, the defendants not only defrauded the plaintiff of nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, and, while withholding, covering-up, concealing and hiding from the plaintiff the plaintiff's earned nine (9) out of twelve (12) correct answers, fraudulently lied to the plaintiff by falsely reporting to the plaintiff that the plaintiff earned no passing scores on the essay portion of the February, 1987, Tennessee bar examination, but also simultaneously and immedi-

February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 14,[1] Section 4, adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the right to procedural due process of law in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

31. [As set forth in the plaintiff's 240-page memorandum of law for the court[7] filed along with the plaintiff's complaint on

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ately ordered the plaintiff to pay additional money to the defendants and to take a second Tennessee bar examination, implicitly and explicitly citing for and enforcing against the plaintiff Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4.

In the same month of April, 1987, the plaintiff in writing requested the defendants to send the plaintiff the plaintiff's 24-page essay together with the answers used by the defendants to grade the plaintiff's 24-page essay and written explanations of what was wrong with the plaintiff's 24-page essay in order for both sides to examine the irrefutable facts explaining and substantiating the allegation of a failure to pass the essay portion and for the plaintiff to know and avoid the contested and irrefutably proven facts of the failure in a subsequent examination. But up to and including the date of this memorandum of law for the Court, the defendants not only covered-up, concealed and hid the plaintiff's 24-page essay, but also refused to comply with the plaintiff's request, making known to the plaintiff by their policy decisions and actions that the administration of the Tennessee bar examination means, not fundamental fairness, *but rather an arbitrary practice of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness, injustice, record-falsification, record-misrepresentation, fact-distortion, equivocation and monetary extortion scheme.*

In denying the plaintiff a right to a fair hearing and to release to the plaintiff the plaintiff's 24-page essay together with the answers used by the defendants to grade the plaintiff's essay and the written explanations of the errors in the essay in order for both sides to examine the irrefutable facts explaining and substantiating the allegation of the failure to pass the essay portion and for the plaintiff to know and avoid the contested and irrefutably proven facts of the alleged failure in a subsequent bar examination, the defendants deprived the plaintiff of the right to procedural due process of law secured for and guaranteed the plaintiff by the due process clause of the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deprive any person of ...due process of law."

[7]In reporting the test scores to the February, 1987, class of Tennessee bar candidates, the defendants (a) defrauded the plaintiff of nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, (b) fraudulently lied to the plaintiff by falsely reporting

February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4, adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the right to substantive due process of law in violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

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in mere empty worded letters without the quantified test scores to the plaintiff that the plaintiff earned no passing scores on the essay portion, while in fact withholding, covering-up, concealing and hiding from the plaintiff nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, (c) decided and acted to withhold, cover-up, conceal and hide from the plaintiff nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the February, 1987, Tennessee bar examination, (d) decided and acted to demand more money from the plaintiff, and (e) decided and acted to order the plaintiff to take a second Tennessee bar examination.

When the plaintiff challenged the defendants to prove by irrefutable facts, as differentiated from mere empty words, that the plaintiff earned no passing scores on the essay portion of the bar examination, the defendants, while still withholding one more passing correct answer meritoriously earned by the plaintiff, gave the plaintiff documentary evidence showing passing scores of eight (8) of the nine (9) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination. Words cannot express the significance of this point of fact, for it proves or disproves the cardinal issue of fact upon which the plaintiff's case against the defendants rests.

The policy decisions and actions of the defendants in the administration of the February, 1987, Tennessee bar examination under authorization of §§ 13.02(a) and 14.04 of Tenn. Sup. Ct. R. 7,that withheld from the plaintiff (a) the plaintiff's earned passing scores of nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination, (b) the plaintiff's 24-page essay, notwithstanding the plaintiff's written request for the same, (c) the answers used by the defendants to grade the essay portion of the February, 1987, Tennessee bar examination, notwithstanding the plaintiff's written request for the same, (d) the plaintiff's earned passing scores of 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination, (e) the plaintiff's "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee, (f) the plaintiff's right to an "employment opportunity" as an attorney-at-law in the State of Tennessee, (g) the plaintiff's intellectual and literary property right in the contents of the plaintiff's 24-page essay, notwithstanding the plaintiff's written request for the same, (h) the plaintiff's right to the plaintiff's personal property right in the plaintiff's 24-pages of paper used by the plaintiff to write the plaintiff's 24-page essay, notwithstanding the plaintiff's written request for the same, and (i) the plaintiff's $25, notwithstanding the plaintiff's written request for the same, blatantly and flagrantly violated the plaintiff's right to substantive due process of law secured

32. [As set forth in the plaintiff's 240-page memorandum of law for the court filed along with the plaintiff's complaint on February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4, adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the rights not only to "equal employment opportunity" as an attorney-at-law and the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee without vindictive retaliation, but also to substantive due process of law in violation of § 704(a) of Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) and the due process clause of the Fourteenth Amendment of the United States Constitution.

33. [As set forth in the plaintiff's 240-page memorandum of law for the court filed along with the plaintiff's complaint on February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4, adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the rights not only to "equal employment opportunity" as an attorney-at-law and the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee without discrimination based on race and sex, but also substan-

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for and guaranteed the plaintiff by the due process clause of the Fourteenth Amendment of the United States Constitution in these words: "...No State shall make or enforce any law which shall...deprive any person of...liberty, or property, without due process of law."

tive due process of law in violation of § 703(b) of Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) and the due process clause of the Fourteenth Amendment of the United States Constitution.

34. [As set forth in the plaintiff's 240-page memorandum of law for the court filed along with the plaintiff's complaint on February 25, 1988], the defendants' administrative decisions, actions, policies and practices, authorized by, derived from and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4, adversely enforced against the plaintiff in the administration of the February, 1987, Tennessee bar examination, were inherently and practically unconstitutional since they deprived the plaintiff of the rights not only to "equal employment opportunity" as an attorney-at-law and the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee without adverse impact, but also to substantive due process of law in violation of §§ 703(b) and 704(a) of Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) and the due process clause of the Fourteenth Amendment of the United States Constitution.

35. [As set forth in the plaintiff's 240-page memorandum of law for the court[8] filed along with the plaintiff's complaint on February 25, 1988], the defendants, severally and jointly, are legally and financially liable to the plaintiff for $10,000,000.00 in compensatory civil damages, $10,000,000.00 in punitive civil damages and the refund of plaintiff's $25, making a total of $10,000,025.00 since the defendants under the laws of the United States violated the plaintiff's civil rights and 42 U.S.C. § 1983 (1983) guarantees civil damages for the violation of the civil rights of any citizen of the United States.

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[8]42 U.S.C. § 1983 "...authorizes recovery of compensatory, and ...punitive damages against an individual for the unjustifiable violation of constitutional rights 'under color' of state law. ...This liability, however, is entirely personal in nature intended

Prayer for Redress

THEREFORE, the plaintiff respectfully prays this Court to advance this case on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited and upon such hearing to:

1. Declare unconstitutional Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4,

2. Declare illegal and unconstitutional the defendants' policies and practices which state:

(a) "There is no provision in the Rule for review of examination papers by the applicant," and

(b) "It is the practice of the board that neither the members of the board nor any of the assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination."

3. Grant the plaintiff a judgment against the defendants for the recovery of the plaintiff's test scores of nine (9) out of twelve

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to be satisfied out of the individual's own pocket. Moreover, the doctrine of sovereign immunity, as codified by the Eleventh Amendment, bars the exaction of a fine from a state treasury without the state's consent." Sostre v. McGinnis, 442 F.2d 178, 204-205 (2d Cir. 1971). "As state administrative officials, defendants are not entitled to the protective immunity from a judgment for damages that has been extended to judges...and legislators." Id., 442 F.2d at 205, fn. 51. "...in a civil rights action a plaintiff who proves only an intangible loss of civil rights or purely mental suffering may...be awarded substantial compensatory damages [under 42 U.S.C. § 1983]. " Magnett v. Pelletier, 488 F.2d 33, 34, 35 (5th Cir. 1973). "Compensatory damages awardable in a Civil Rights Act case are not limited to out-of-pocket pecuniary loss the complainant suffered. Damages can also be awarded for emotional and mental distress [under 42 U.S.C. § 1983]." Donovan v. Reinbold, 433 F.2d 738, 739, 743 (9th Cir. 1970).

(12) correct answers on the essay portion and 175 out of 200 correct answers on the multistate portion both on the February, 1987, Tennessee bar examination,

4. Grant the plaintiff a judgment against the defendants for the certification and license of the plaintiff as an attorney-at-law in the State of Tennessee based on the plaintiff's passing test scores on the February, 1987, Tennessee bar examination.

5. Grant the plaintiff a judgment against the defendants for $10,000,000.00 in compensatory civil damages, $10,000,000.00 in punitive civil damages and the refund of plaintiff's $25, making a total amount of $20,000,025.00,

6. Retain jurisdiction over this action to ensure full compliance with the Orders of this Court, and with applicable law, require the defendants to file such reports as the Court deems necessary to evaluate the defendants' compliance with the Orders of this Court.

7. Grant the plaintiff a judgment against the defendants for the payment by the defendants of the plaintiff's attorneys' fees, costs and disbursements pursuant to The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1983, and

8. Grant the plaintiff such additional redress from the defendants as the Court deems proper and just.

Respectfully submitted,

_____

Carmen R. Stanfield
Limited Practice Attorney
for the Plaintiff
P. O. Box 5688
Nashville, Tennessee 37208
(615) 327-1959

Index to Plaintiff's Appendix

TENNESSEE
SUPREME COURT RULE FOR
LICENSING OF ATTORNEYS

as amended
July 1, 1985

BOARD OF LAW EXAMINERS
OF THE STATE OF TENNESSEE

Tenth Floor, L & C Tower
401 Church Street
Nashville, TN 37219
Telephone 615-741-3234

Printed: March 1, 1986

13.02. Petitions to Board

(a) Any person who is aggrieved by any action of the board involving or arising from the enforcement of this Rule (other than failure to pass the bar examination) may petition the board for such relief as is within the jurisdiction of the board to grant.

Article XIV
Review of Board Decisions

14.01. Petition for Review. Any person aggrieved by any action of the board may petition this Court for a review thereof, as under the common law writ of certiorari. On the grant of the writ, the administrator shall certify and forward to the Court a complete record of the proceedings before the board in that matter. Any such petition must be filed within 60 days after the action complained of.

14.03. Exhaustion of Board Remedies. The Court will entertain no application or petition from any person who may be effected [affected] directly or indirectly by this Rule, unless that person has first exhausted his remedy before the board.

14.04. No Review of Failure to Pass Bar Examination. The only remedy afforded for a grievance for failure to pass the bar examination shall be the right to reexamination as herein provided.

P. O. Box 5688
Nashville, Tennessee 37208
April 14, 1987

Ms. Betty W. Horn
Administrator
Board of Law Examiners of Tennessee
Tenth Floor, L & C Tower
401 Church Street
Nashville, Tennessee 37219

Dear Ms. Horn:

Your mere words put in writing on April 11, 1987, tell me that you again want me to pay the board of law examiners of Tennessee $25 by April 30, 1987, and then $375 by May 15, 1987, to cover reexamination fees for "notice of intent," "application," and "examination," and that your reason is that the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me on the February 25 and 26, 1987, Tennessee bar examination I took February 25 and 26, 1987, and that, by implication, you want me to retake the bar exam if I want to practice law in the State of Tennessee of which I am a citizen.

While you want from me the hard facts of money, you find no merit whatsoever in the fact that after spending 3 years studying law in law school, earning more than 90 credit hours with a GPA of 87.50 in law school, paying more than $1000 to take the February 25 and 26, 1987, Tennessee bar examination, spending 6 weeks in an intensive and extensive bar review course for the February 25 and 26, 1987, Tennessee bar examination, answering all 200 questions on the multistate portion of the February 25 and 26, 1987, bar examination and answering all 12 questions in

24 8 1/2" by 14" legal size pages on the essay portion of the February 25 and 26, 1987, Tennessee bar examination, I have a right and deserve to know in irrefutable fact why I should give you more money.

The ordinary prudent person cannot fail to see the effect of your mere words that I cannot perform any work of an attorney-at-law in my natural lifetime in the State of Tennessee of which I am a citizen before I take and pass the essay portion and the multistate portion of the Tennessee bar examination, and yet neither you nor members of the board of law examiners or writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination are willing as stated in your letter under reference to state in objective, measurable, verifiable, invariable, certain, known, and specific facts why you, members of the board of law examiners, writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination said that the answers written by me on the February 25 and 26, 1987, Tennessee bar examination are not the objective, measurable, verifiable invariable, certain, and specific answers that you, members of the board of law examiners, writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination know and have, that if and when severally and repeatedly given as the answers on the February 25 and 26, 1987, Tennessee bar examination by any number of successive groups or classes of bar candidates constitute the invariable and exclusive proof of the objective, measurable, invariable, certain and specific ability required by you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to perform any work of an attorney-at-law in the State of Tennessee.

Do not be quick to mislead yourself in erroneously believing that the issues here are:

(1) That the State of Tennessee does not have legal authority to

require and give a bar examination on the basis of which to license a person as attorney-at-law to engage in the practice of law in the State of Tennessee, and

(2) That the State of Tennessee does not have the legal authority to constitute a group of legal professionals to write the February 25 and 26, 1987, Tennessee bar examination.

Those are <u>not</u> the issues. The issue is this:

Where as for the February 25 and 26, 1987, Tennessee bar examination you, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination have invariable answers for the February 25 and 26, 1987, Tennessee bar examination that invariably establish invariable proof of the invariable ability of any bar candidate to perform any work of an attorney-at-law in the State of Tennessee of which I am a citizen, and where you, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination said that answers written by me are not the invariable answers that you, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination know, have, and require as the standard of your selection procedure (the written February 25 and 26, 1987, Tennessee bar examination and the invariable answers to the February 25 and 26, 1987, Tennessee bar examination), then I have **the right to know**, and in consequence, you have the burden to give to me not only explanations of the invariable answers that you, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not see in the answers written by me, but also **incontrovertible proof of the validity of the relationship between your written February 25 and 26, 1987, Tennessee bar examination**, and

invariable answers, on the one hand, and the predicted invariable ability of any bar candidate to perform any work of an attorney-at-law, on the other hand, in the State of Tennessee of which I am a citizen.

You will agree, I am sure, that a matter as very serious as this matter should, not be left in mere empty words but rather, be based on irrefutable facts. Accordingly, for consideration by other legal scholars, legal practitioners, state judges, federal judges in both state courts and federal district courts, federal circuit courts and the United States Supreme Court, I formally request you, members of the board of law examiners, writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination, at least for now, to send me the following facts:

1. A legible and neat photocopy of each of the two 8 1/2" x 14" legal size pages on each of the 12 questions totalling 24 pages I wrote on the essay portion of the February 25 and 26, 1987, Tennessee bar examination.
2. Legible and neat copies of the objectively measurable, invariable, certain and known, and specific answers required, and used by you, members of the board of law examiners, writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to read and grade the answers I gave in the essay portion of the February 25 and 26, 1987, Tennessee bar examination.
3. Legible and neat copies of the objectively measurable, invariable, certain, known and specific explanations of the objectively measurable, invariable, certain, and known specific rules of law and their applications which you, members of the board of law examiners, writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination required but failed to see in the answers I wrote in the essay portion of the February 25 and 26, 1987, Tennessee bar examination.

4. Incontrovertible proof of the criterion-related validity of your February 25 and 26, 1987, Tennessee bar examination and your invariable answers for the February 25 and 26, 1987, Tennessee bar examination (e.g., a statistical relationship between scores based on your February 25 and 26, 1987, Tennessee bar examination and your invariable answers for the February 25 and 26, 1987, Tennessee bar examination, on the one hand, and measures of job performance as an attorney-at-law, in the State of Tennessee, on the other hand.)
5. Incontrovertible proof of the content validity of your written February 25 and 26, 1987, Tennessee bar examination and your invariable answers for the February 25 and 26, 1987, Tennessee bar examination (e.g., proof that your February 25 and 26, 1987, Tennessee bar examination and your invariable answers for the February 25 and 26, 1987, Tennessee bar examination representatively sampled significant parts of the job of an attorney-at-law in the State of Tennessee.
6. Incontrovertible proof of the construct validity of your February 25 and 26, 1987, Tennessee bar examination and your invariable answers for the February 25 and 26, 1987, Tennessee bar examination (e.g., proof of the identification and measurement of the presence and degree of the trait or construct which underlies successful performance on the job as an attorney-at-law in the State of Tennessee.)

Please do not underestimate my unswerving determination to get from you the above requested facts through every available legal means in all the courts in the United States, from the first appropriate court in the state judicial system to the last appropriate court in the federal judicial system.

To say in mere empty words that you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not

pass me is not the same as to say that on the irrefutable facts of validation of your required February 25 and 26, 1987, Tennessee bar examination and your required invariable answers for the February 25 and 26, 1987, Tennessee bar examination, you, members of the board of law examiners, and the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me. Clearly, to give you the attached $25 check you requested is no admission that your empty words are true.

Please take a very serious note of the fact that while you, members of the board of law examiners, writer(s), readers(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination reached the unfounded conclusion that because you allege that you did not find in my answers to the February 25 and 26, 1987, Tennessee bar examination your invariable and yet to be validated answers for the February 25 and 26, 1987, Tennessee bar examination I lacked the ability to see, know, and defend as an attorney-at-law the legal rights, immunities, responsibilities, accountabilities, and liabilities of any citizen in the State of Tennessee, I still proved to you by the contents of this letter that I can either as a person or as an attorney-at-law see, know, raise and defend my legal rights, or those rights of any other person, in the State of Tennessee; and indeed, I stand ready to continue to state, prove and defend my legal rights in any court of law in the United States.

Whatever may be your motive for sending me the "notice of intent" form and asking me for the enclosed $25, I can no doubt get it back from you in keeping with the law.

While waiting to hear from you, I remain,

Sincerely,

Carmen R. Stanfield

Memorandum

To: Betty W. Horn, Administrator, Members of the Board of Law Examiners of the State of Tennessee, the Writer(s), Reader(s) and Grader(s) of the February 25 and 26, 1987, Tennessee bar examination

From: Carmen R. Stanfield, P. O. Box 5688, Nashville, Tennessee 37208

Subject: The Violations of My Rights Guaranteed Under the Constitutional and Statutory Laws of the United States by the Selection Procedure of the State of Tennessee to License Attorneys-at-Law in the State of Tennessee Administered by the Board of Law Examiners of the State of Tennessee During and After the February 25 and 26, 1987, Tennessee Bar Examination

Date: April 17, 1987

In your letter of April 11, 1987, you said:

(1) that "the board of law examiners regrets to inform you that you were not successful on the February 25 and 26, 1987, Tennessee bar examination,"

(2) that "It is the practice of the board that neither the members of the board nor any of the assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination," and

(3) that you requested me to send you a total of $400 as fees for the "notice of intent to take the Tennessee bar examination," "application," and "examination" for the July, 1987, Ten-

nessee bar examination.

Taken as the practice stated by you in your letter under reference, you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination adamantly refused to offer me an explanation as to how and why you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me. In my letter of April 14, 1987, I formally requested you, members of the board of law examiners, writer(s), readers(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination not only to send me specifically described 6 (six) sets of irrefutable facts to explain to me the how and why you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me on the February 25 and 26, 1987, Tennessee bar examination. Up to the writing of this letter, you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination continue to adamantly refuse to give me an irrefutable explanation of how and why you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me.

I hereby not only formally challenge your two adamant refusals to explain your actions to me, but also formally charge you, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination with the blatant and flagrant violations of my rights guaranteed under the Constitutional and statutory laws of the United States.

A time-honored and time-tested legal maxim has it that he who seeks equity must come with clean hands. Accordingly, this leaves me no choice but to show to the judicious mind in

substance my hands to determine whether they are clean and hence I deserve the justice I so seek.

I. **Preparation for the Bar Examination** -- After earning a diploma in 1974 symbolizing the completion of my training as a legal clerk from the United States Army Institute of Administration, I worked as a legal clerk for 3 years processing legal forms such as wills, separation agreements, child support agreements, powers of attorney, bills of sale, Article 15's, Chapter 13's, Summary Courts Martial, Special Courts Martial, and General Courts Martial for at least 4,800 clients.

I left to enter a pre-law program leading to the B.A. degree in which in 4 years I earned 123 credit hours and graduated with a grade point average of 3.83, summa cum laude.

I left to enter a law program leading to the J.D. degree in which I:

(a) studied 30 different courses representing 30 different subfields of law,
(b) earned a corpus juris award for all-around best course work performance,
(c) earned an honored position on the law review staff,
(d) earned a best brief award in Philadelphia, Pennsylvania,
(e) earned a distinguished moot court participation award in New York City, New York,
(f) worked as a student attorney in both an Equal Employment Litigation Clinic and a Small Business Law Clinic,
(g) worked as a paralegal specialist [law clerk] in the United States Department of Justice, and finally,
(h) graduated with a grade point average of 87.50, cum laude.

I left to enter a Crossley Bar Review Course in which I:

(a) reviewed 17 courses representing 17 different subfields of law,
(b) spent 672 hours of intensive and extensive study, and
(c) prepared from bar review lectures personal handwritten outlines over 1,200 pages.

I left to take the Tennessee bar examination on February 25 and 26, 1987, during which I:

(a) answered all 200 multi-state questions on the multi-state portion of the Tennessee bar examination, and

(b) answered all 12 questions on two 8 1/2" x 14" legal size pages for each question on the essay portion of the bar examination of the Tennessee bar examination.

In terms of dollars and cents, preparation for the Tennessee bar examination cost me $67,500, excluding the immeasurable impact of pressures, tensions, and stresses of studying.

II. Procedural Violations of My Rights -- In mere empty words, Betty W. Horn, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination said they did not pass me on the February 25 and 26, 1987, Tennessee bar examination, but they refused to meet with me face to face to answer my questions as to how and why they did not pass me; and in writing I formally requested Betty W. Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to send me irrefutable facts that can explain to me how and why Betty Horn, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me, but they refused to do so. In both instances, their refusals to explain their actions imply the admission of the following:

(1) the existence of a selection procedure for the licensing of attorneys-at-law in the State of Tennessee administered by Betty Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination in the administration of which they blatantly and flagrantly said to me: we took your money for the first time to fail you with no intention to explain to you how and

why, and we intend to take your money for the second and third time to fail you the second and third time with no intention to explain to you how and why the second and third times,

(2) the existence of a selection procedure for the licensing of attorneys-at-law in the State of Tennessee administered by Betty Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination in the administration of which they blatantly and flagrantly said to me: after taking your money three times, and not passing you three times without any explanation whatsoever, we intend to painfully slap you in the face with Tennessee Supreme Court Rule 7, Article IV, Section 405, which prohibits taking the Tennessee bar examination for the 4th time.

(3) observed violation of anonymity by administrators of the February 25 and 26, 1987, Tennessee bar examination, viz.:

(a) one female administrator requested my regular identification card, and compared my physical appearance with my identification photo appearance. She identified me as a black female, and in an intentional covering-up manner, she made some identification mark by my name on the roster of names,

(b) another male administrator sitting very next to the aforementioned female administrator gave me a card showing an assigned seat number and an envelope containing an assigned examination number,

(c) after taking my seat bearing the assigned number and commencing the answering of the examination questions, the same female administrator who identified me as a black female and marked some identification mark by my name walked by, near, and over me observing the seat bearing the number in which I was seated to facilitate not only matching me and my seat number with the mark of identification she wrote earlier by my name, but also to facilitate action adverse to me in matching my name and my assigned examination number in the determining

and reporting of my scores on the February 25 and 26, 1987, Tennessee bar examination,

(d) finally and immediately after the examination, another female administrator received from me both my name and assigned examination number, matched my name and assigned examination number on the basis of the previously collected information that I am a black female, and then in empty words adversely reported to me that she, the members of the board of law examiners, the writer(s), reader(s), and grader(s) did not pass me,

(4) that the administrator who matched my name to my assigned examination number motivated and blinded by her self-conceived, self-internalized, self-imposed, and self-acted upon racial discrimination excluded my examination from consideration on its merits by the reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination,

(5) that the administrator who matched my name to my assigned examination number motivated and blinded by her self-conceived, self-internalized, self-imposed, and self-acted upon racial discrimination transmitted my bar examination to the reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination and informed the reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination that: (a) I am a black female, (b) my examination be given less attention than it deserves, (c) my examination be given less score than it deserves, or it be given no score at all,

(6) that the reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination motivated and blinded by their self-conceived, self-internalized, self-imposed, and self-acted upon racial and sex discrimination gave less thought and attention to the contents of my examination than it deserves,

(7) that the reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination motivated and blinded by their self-conceived, self-internalized, self-imposed, and self-

acted upon racial and sex discrimination never read my examination to know the contents, and

(8) that notwithstanding the above described blatant and flagrant procedural violations of my rights, the members of the board of law examiners of the State of Tennessee motivated and blinded by their self-conceived, self-internalized, self-imposed, and self-acted upon racial and sex discrimination adamantly continued to violate my rights through the enforcement of the above procedural violations against me in the administration of the selection procedure for the licensing of attorneys-at-law in the State of Tennessee.

III. Substantive Violations of My Rights -- In mere empty words, Betty W. Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination said that they did not pass me on the February 25 and 26, 1987, Tennessee bar examination, but they refused to meet with me face to face to answer my questions as to how and why they did not pass me; and in writing, I formally requested Betty Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to send me irrefutable facts that can explain to me how and why Betty W. Horn, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination did not pass me, but they refused to do so. In both instances, their refusals to explain their actions imply the admission of the following facts:

(1) both the test and the covered-up answers lacked criterion-related validity. For example, the Lawyer's Registry lists at least 158 specialties for attorneys-at-law which correspond to at least 158 job areas for attorneys-at-law, but neither the test nor the covered-up answers which serve as the standards of the selection

procedure for licensing attorneys-at-law in the State of Tennessee contained all the basic and indispensable elements or criteria of each of the at least 158 job areas for attorneys-at-law, but instead, the test was drawn from 9 specialties without reference to the basic and indispensable elements or criteria of the jobs performed in the real world by attorneys-at-law possessing and using those specialties,

(2) again, both the test and the covered-up answers lacked criterion-related validity. For example, in law school, I studied and completed 30 courses representing 30 specialties and 30 job areas for attorneys-at-law. As one who intended to be a solo lawyer, I needed the 30 specialties to perform efficiently and effectively all the elements or criteria of the work in each of the corresponding 30 job areas for attorneys-at-law, but neither the test nor the covered-up answers which serve as the standards of the selection procedure for licensing attorneys-at-law in the State of Tennessee contained all the basic and indispensable elements or criteria of each of the at least 30 job areas performed in the real world by solo attorneys-at-law in the State of Tennessee,

(3) both the test and the covered-up answers lacked content validity. For example, the Lawyer's Registry lists at least 158 specialties for attorneys-at-law which correspond to at least 158 job areas for attorneys-at-law, but neither the test nor the covered-up answers which serve as the standards of the selection procedure for licensing attorneys-at-law in the State of Tennessee contained a significant representative sample of all the basic and indispensable elements or criteria of each of the at least 158 job areas for attorneys-at-law, but instead, the test was drawn from 9 specialties without reference to proof that it representatively sampled significant parts of the 158 job areas performed in the real world by attorneys-at-law possessing and using those specialties,

(4) again, both the test and the covered-up answers lacked

content validity. For example, in law school, I studied and completed 30 courses representing 30 specialties and 30 job areas for attorneys-at-law. As one who intended to be a solo lawyer, I needed the 30 specialties to perform efficiently and effectively all the elements or criteria constituting the contents of the work in each of the corresponding 30 job areas for attorneys-at-law, but neither the test nor the covered-up answers which serve as the standards of the selection procedure for licensing attorneys-at-law in the State of Tennessee contained proof that they representatively sampled significant parts of all the basic and indispensable elements or criteria constituting the contents of each of the at least 30 job areas performed in the real world by solo attorneys-at-law in the State of Tennessee.

(5) both the test and the covered-up answers lacked construct validity. For example, according to Edward D. Re, Thomas Mauet, Robert E. Keeton, Squire Padgett, etc., attorneys-at-law performing the job of a trial lawyer have time and again demonstrated in the real world, and hence, an incoming trial attorney-at-law needs to have and demonstrate in the real world at least 23 constructs; and according to Professor David A. Lang, attorneys-at-law performing the role of a teacher in law school have time and again demonstrated and hence incoming teaching attorneys-at-law need to have and demonstrate in the real world at least 15 constructs, (just to mention a few of the various types of attorneys-at-law possessing and demonstrating various types of constructs in the real world), but neither the test nor the covered-up answers which served as the standards of the selection procedure for licensing attorneys-at-law in the State of Tennessee contained significant proof of the identification and measurement of the presence and degree of constructs which underlie successful performance of the jobs of attorneys-at-law in the State of Tennessee.

(6) again, both the test and the covered-up answers lacked construct validity. For example, in 22 of the years of my life,

time and again in the classroom setting and in the office setting, I successfully demonstrated at least 10 of my natural constructs and 9 of my acquired constructs making a total of at least 19 constructs all of which were meant to enable me to efficiently and effectively perform successfully all of the basic and indispensable elements or criteria of each of the jobs of a solo attorney-at-law, but neither the test nor the covered-up answers which served as the standards of the selection procedure for licensing attorneys-at-law in the State of Tennessee contained significant proof of the identification and measurement of the presence and degree of the constructs which underlie my ability to successfully perform the job of a solo attorney-at-law in the State of Tennessee, and

(7) notwithstanding the above described blatant and flagrant substantive violations of my rights, the members of the board of law examiners of the State of Tennessee motivated and blinded by their self-conceived, self-internalized, self-imposed, and self-acted upon racial and sex discrimination adamantly continued to violate my rights through the enforcement of the above substantive violations against me in the administration of the selection procedure for the licensing of attorneys-at-law in the State of Tennessee.

IV. Challenges and Charges -- In the State of Tennessee, the board of law examiners officially recruits, selects, certifies and licenses attorneys-at-law to serve the citizens of the State of Tennessee just as the United States Civil Service Commission, now the Office of Personnel Management, recruits, selects, and certifies career civil servants to serve the federal government, and, through the federal government, to serve the citizens of the United States, including the citizens of the State of Tennessee. Therefore, actions which blatantly and flagrantly violate the rights of citizens in the course of the administration of the attorneys-at-law selection procedure of the State of Tennessee

administered by the board of law examiners of the State of Tennessee, like in all selection procedures in both the private and public sectors, are subject to the jurisdiction of the federal administrative and judicial agencies empowered to enforce the relevant constitutional and statutory laws of the United States that guaranteed the rights of citizens.

Notwithstanding the irrefutable facts of my academic and practical preparations and qualifications and my writing more than a passing quality essay on the essay portion of the February 25 and 26, 1987, Tennessee bar examination, the Tennessee selection procedure for licensing attorneys-at-law in the State of Tennessee, as described above, used by Betty Horn, administrator, members of the board of law examiners, the writer(s), reader(s), and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to take my money, to fail me on the February 25 and 26, 1987, Tennessee bar examination without any cause on my part, to deny me an opportunity to question them to irrefutably explain how and why they failed me on the February 25 and 26, 1987, Tennessee bar examination, and in effect,.to inflict upon me continually throughout the remaining years of my natural life in the State of Tennessee punishment, pains, mental anguish, degradation, humiliation, and suffering by unduly withholding my license to engage in the practice of law in the State of Tennessee not only blatantly and flagrantly discriminated against me on the basis of race and sex, but also blatantly and flagrantly denied me **due process and equal protection of the law in violation of provisions of the United States Constitutional and statutory laws.**

Please take a very serious note of the fact that I am obliged to comply with the requirements of the statute of limitations under federal laws in filing my complaints to meet the requirement of administrative exhaustion prior to filing my case in an appropriate federal court. The longer you take to respond, the easier it will be for me to file my case.

Memorandum

To: Betty W. Horn, Administrator, Members of the Board of Law Examiners of the State of Tennessee, the Writer(s), Readers(s) and Grader(s) of the February 25 and 26, 1987, Tennessee Bar Examination

From: Carmen R. Stanfield, P. O. Box 5688, Nashville, Tennessee 37208

Subject: Notice of Complaint

Date: April 23, 1987

You are hereby notified that effectively immediately, I filed my complaint against you with the United States Civil Rights Commission.

Following the administrative exhaustion, I shall notify you of the lawsuit that will take place in the appropriate federal court.

Memorandum

To: United States Civil Rights Commission

From: Carmen R. Stanfield, P. O. Box 5688, Nashville, Tennessee 37208

Subject: Complaint of Violations of Carmen R. Stanfield's Civil Rights by the Board of Law Examiners of the State of Tennessee

Date: April 23, 1987

Point I

The right or privilege to practice law (like the right or privilege to vote) in the State of Tennessee is a right or privilege given and guaranteed by the Constitutional and statutory laws of the State of Tennessee to all qualified citizens of the State of Tennessee. The right or privilege to practice law (like the right or privilege to vote) in the State of Tennessee is therefore a civil right.[1] While my legal residence in the State of Tennessee makes me a citizen of the State of Tennessee entitled to the right or privilege to practice law in the State of Tennessee, my natural birth in the United States makes me a citizen of the United States[2]entitled to the legal protection guaranteed citizens of the United States under the Constitutional and statutory laws of the United States.[3]

Point II

During the February 25 and 26, 1987, Tennesse bar examination, I duly presented myself to take the Tennessee bar examination. But with an intention to adversely discriminate against me on the basis of race and sex, as was later proven by their action, the administrators of the February 25 and 26, 1987,

Tennessee bar examination violated the required anonymity when the administrator used my race, sex, physical appearance, name, identification photo, seat number and examination number to adversely act upon my written examination and to adversely report to me that they did not intend to certify me for a license to practice law in the State of Tennessee.[4]

Point III

During the February 25 and 26, 1987, Tennessee bar examination, I duly presented myself to take the Tennessee bar examination. I answered all the 200 questions on the multistate portion with qualitatively passing answers and I answered all the 12 essay questions on the essay portion with qualitatively passing answers in a 24-page essay on 8 1/2" x 14" legal-size pages. But the board of law examiners in mere empty words on April 11, 1987, informed me that it did not intend either to certify me for a license to practice law in the State of Tennessee or to explain by irrefutable words or irrefutable facts its decision and action or even to give me an opportunity to question and rebut its decision and action.

In effect, the board of law examiners said to me not only that no matter how many times I duly presented myself with my qualitative academic and practical qualifications and preparations to take the Tennessee bar examination it did not intend either to certify me for a license to practice law in the State of Tennessee or to explain by irrefutable words or irrefutable facts its decision and action or even to give me an opportunity to question and rebut its decision and action, but also that I must to the end of my natural life in the State of Tennessee endure the punishment, pains, mental anguish, degradation, humiliation and suffering it inflicted upon me without any recourse by unduly withholding from me the license to practice in the State of Tennessee law the only field in which I am professionally trained.[5]

Point IV

In writing, I requested the administrator, members of the board of law examiners, the writer(s), reader(s) and grader(s) of the February 25 and 26, 1987, Tennessee bar examination to send me: (1) copies of my 24-page essay on the Tennessee bar examination, (2) copies of the board of law examiners' 12 answers to the 12 essay questions, (3) explanations of the specific problems with the answers constituting my 24-page essay on the Tennessee bar examination, (4) irrefutable proof of the criterion-related validity of the board of law examiners' 12 answers as well as the 12 questions, (5) irrefutable proof of the content validity of the board of law examiners' 12 answers as well as 12 questions, and (6) irrefutable proof of the construct validity of the board of law examiners' 12 answers as well as 12 essay questions.

In all the above instances of requests, the intent was not only to compare, contrast, analyze, and evaluate the facts in order to determine, other than the factors of race and sex, the how and why the board of law examiners decided and acted not to certify me for a license to practice law in the State of Tennessee, but also to challenge and contest in an appropriate court of law the decision and action of the board of law examiners as being without any basis in law or in fact. But up to the writing of this memorandum, the board of law examiners of Tennessee, in refusing to respond, has stood by its intention never to say a word or to furnish any objective evidence to explain its decision and action,[6] and in effect, this practice exposed my written evidence or essay in the hands of the board of law examiners to systematic alteration, distortion, falsification, erasure and changes to facilitate justification of their adverse decision and action not to certify me for a license to practice law in the State of Tennessee.

Point V

The board of law examiners requested me on April 11, 1987, to pay another $25 for an "intent to retake the Tennessee bar examination," notwithstanding its intention and action not to certify me for a license to practice law in the State of Tennessee, not to explain to me by irrefutable facts its decision and action, and not to give me an opportunity to question and rebut its decision and action. In effect, the board of law examiners informed me that given my earnest and burning desire to be an attorney-at-law, and given its superordinate position over me and the object of my desire its intention is to use the attorneys-at-law selection procedure to extort money from me for as long as it wishes without giving me any recourse. I paid the $25 with a protest and an express intention to recover it from the board of law examiners.[7]

Point VI

Procedurally, the State Supreme Court of Tennessee not only authorized the board of law examiners to exercise its discretion in making its own rules and statements of policy,[8] but also authorized the board of law examiners to exercise its discretion in determining the format and structure of the bar examination.[9] While the State Supreme Court of Tennessee authorized the board of law examiners to exercise its discretion in determining which bar candidates to certify for license to practice law in the State of Tennessee and which bar candidates not to certify for license to practice law in the State of Tennessee, nowhere under its rules did the State Supreme Court of Tennessee provide an opportunity for any candidate like me in the latter category adversely affected by the arbitrary decision and action of the board of law examiners of Tennessee to question and rebut the legality and factuality of the board of law examiners'

decision and action not to certify any candidate like me for a license to practice law in the State of Tennessee.

Point VII

Like the board of law examiners, the State Supreme Court of Tennessee is interested, not in fundamental fairness in the process of certification for license to practice law in the State of Tennessee--validation of the questions and answers of the essay examination, equitable reading and grading answers on the essay questions, irrefutable explanations of why answers on the essay examination are unacceptable, responsiveness to the necessity of a rebuttal to arbitrary decision and action of reader(s), grader(s), and board members--but rather, in receiving from an aggrieved bar candidate like me money for the next bar examination on the substance of which there would be no guarantee, as it was on the substantive issues of the preceding bar examination, that both the State Supreme Court of Tennessee and the board of law examiners of Tennessee would not arbitrarily repeat as an endless cycle their decisions and actions established as a pattern in the first bar examination.

Point VIII

Used by both the State Supreme Court of Tennessee and the board of law examiners of Tennessee to enforce the above described practice of an endless cycle of extorting money from an aggrieved bar candidate like me are Tennessee Supreme Court Rule 7, Sections 13.02 and 14.04.

> "13.02. Petitions to board. --(a) Any person who is aggrieved by any action of the board involving or arising from the enforcement of the Rule (other than failure to pass the bar examination) may petition the board for such relief as is within the jurisdiction of

the board to grant," and

> "14.04. No review of failure to pass bar examination. --The only remedy afforded for a grievance for failure to pass the bar examination shall be the right to reexamination as herein provided."

Against the above background, like the State Supreme Court of Tennessee, the board of law examiners of Tennessee, in exercising its discretion to make its own rules and statements of policy stated as its policy that:

> "It is the practice of the board that neither the members of the board nor any of its assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination."

Tennessee Supreme Court Rule 7, Sections 13.02 and 14.04 and the above quoted practice of the board of law examiners to the extent that they flagrantly, blatantly, and arbitrarily deny any aggrieved bar candidate like me an opportunity to question and rebut the decision and action of both the board of law examiners of Tennessee and the State Supreme Court of Tennessee not to certify an aggrieved bar candidate like me for license to practice law in the State of Tennessee violate the rights of an aggrieved bar candidate like me guaranteed under the Constitutional and statutory laws of the United States.[10]

Point IX

Moreover, like the State Supreme Court of Tennessee, the board of law examiners of Tennessee, in exercising its discretion in determining the format and structure of the bar examination,

chose, not to establish the criterion validity, content validity, and construct validity of the essay questions and answers on the bar examination but rather, to cover-up their yet to be validated answers to the essay questions when requested by an aggrieved bar candidate like me, and yet used the same yet to be validated and covered-up answers to arbitrarily decide and act upon the decision not to certify a bar candidate like me. **While the practice of covering up answers in effect suggests the nonexistence of factual answers but rather an arbitrary, subjective and discriminatory discretion,** the practice nevertheless violates the civil rights guaranteed under the statutory laws of the United States of any bar candidate like me whom it adversely affects.[11]

At this point in time, it is my intention to get, on the basis of the results of the February 25 and 26, 1987, Tennessee bar examination, from the board of law examiners of the State of Tennessee and the Tennessee Supreme Court my certification and license to practice law in the State of Tennessee as well as my last $25 they extorted from me in meeting the requirement of administrative exhaustion through the United States Civil Rights Commission, and depending upon the outcome of the administrative process, it is my further intention to get, on the basis of the results of the February 25 and 26, 1987, Tennessee bar examination, from the board of law examiners of the State of Tennessee and the Tennessee Supreme Court my certificate and license to practice law in the State of Tennessee as well as my last $25 they extorted from me through the appropriate federal court.

Enclosed are the details of the challenges and charges I communicated to the board of law examiners of the State of Tennessee to which no responses have been made.

Carmen R. Stanfield

Notes on Specific Citation of Relevant Laws, Statutes and Self-Evident Statements of Facts

1. "...The certificate of the board is the thing upon which the Supreme Court must determine the right of the applicant to be admitted." Tennessee Code Annotated (T.C.A.) 23-1-104, Analysis, Basis for Court's decision. In re Bowers, 137 Tenn. 193, 192 S.W. 919 (1916); In re Bowers, 138 Tenn. 662, 200 S.W. 821 (1917).

"...The intent and purpose of the statute is to make the practice of law in any court a privilege. Tennessee Code Annotated (T.C.A.) 23-1-108, Analysis, Intent and Purpose. Gregory v. City of Memphis, 157 Tenn. 68, 6 S.W.2d 332 (1923). Tennessee Code Annotated (T.C.A.) 23-1-101, 104, 108; Tennessee Supreme Court Rules (Tenn. R. Sup. Ct.) 6 and 7; Tennessee Constitution, Article XI, Sec. 8; Lineberger v. State ex rel. Beeler, 174 Tenn. 538, 129 S.W.2d 198 (1939).

2. "...All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside." (United States Constitution, Fourteenth Amendment) "...Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union." Slaughter-House Cases, 16 Wall. 36 (1873).

3. "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." (United States Constitution, Fourteenth Amendment)

4. The violation of anonymity as a practice per se (1) exposed my written examination in the hands of the board to systematic discrimination on the basis of my race and sex, as the author, and (2) on the basis of my race and sex inflicted discriminatory

effects upon me as a minority female, in violation of the provision of Title VII of the Civil Rights Act of 1964, as amended.

5. This violates my rights guaranteed by the due process clause of the 5th Amendment and the due process clause of the 14th Amendment of the federal constitution. The fairness which due process requires in civil and criminal procedures alike demands that when the law creates a presumption of guilt, or misconduct or incapacity, or unfitness, this presumption should not be made irrebutable. The person who is the subject of the presumption must be given the chance to rebut it if he can. Slochower v. Board of Education, 350 U.S. 551 (1956). The fairness which due process requires is that where a decision of a board, as in this case of the Tennessee board of law examiners, presumes unfitness to practice law in the State of Tennessee, the presumption should not be made irrebutable in violation of due process as fundamental fairness.

6. The Tennessee board of law examiners' selection procedure per se (a) of deciding and acting not to certify some bar candidates for license to practice law, (b) of withholding and refusing to release to aggrieved bar candidates all the related objective evidence necessary to irrefutably explain the facts of the adverse decision and action (c) leaving an aggrieved bar candidate no chance to rebut the facts of the adverse decision and action: (1) exposed my written evidence or essay in the hands of the administrator, board of law examiners of Tennessee, the writer(s), reader(s), and grader(s) to systematic alteration, distortion, falsification, erasure, and changes to facilitate justification of the board's adverse decision and action, (2) inflicted discriminatory effects on me as a minority female, (3) denied me as a minority female due process under the 5th Amendment and the 14th Amendment of the Federal Constitution, and (4) denied me as a minority female equal protection of the law guaranteed me under the 14th Amendment of the Federal Constitution.

7. Id.

8. Tennessee Supreme Court Rule 7, Section 12.05.

9. Tennessee Supreme Court Rule 7, Section 4.02.

10. This violated the due process clause of the 5th and 14th Amendment and the Equal Protection Clause of the 14th Amendment of the Federal Constitution.

11. This violates the Civil Rights Act of 1964, as amended.

Specification of Enclosures

1. 1-Page Notice of Complaint dated April 23, 1987, addressed to Betty W. Horn, Administrator, et al.

2. 9-Page Memorandum dated April 17, 1987, addressed to Betty W. Horn, Administrator, et al.

3. 7-Page Letter dated April 14, 1987, addressed to Betty W. Horn, Administrator, board of law examiners of Tennessee.

Memorandum

To: Betty W. Horn, Administrator, Tennesseee Board of Law Examiners, the Writer(s), Reader(s), and Grader(s) of the February 25 and 26, 1987, Tennessee Bar Examination.

From: Carmen R. Stanfield, P. O. Box 5688, Nashville, Tennessee, 37208

Subject: (1) Betty W. Horn's Additional Change and Reduction of Carmen R. Stanfield's February 25 and 26, 1987, Tennessee Bar Examination Scores

(2) Tennessee Board of Law Examiners' Deprivation of Carmen R. Stanfield's Financial Property--Money ($400) --and Intellectual Property--24-Page Essay--Without Due Process of Law

(3) Prior to Federal Court Ruling in Case of February 25 and 26, 1987, Bar Examination, No Intention on Part of Carmen R. Stanfield to Take any More Tennessee Bar Examinations

Date: April 27, 1987

A. Procedural Violations of Carmen R. Stanfield's Rights

A reading by an ordinary prudent person of my inquiries of April 14, 17, and 23, 1987, addressed to you, especially page 2, paragraph 3, line 11, of the inquiry of April 23, 1987, would leave no doubt on the mind of the reader that your decision and action in question (i.e., exclusion of my examination from consideration on its merits, arbitrary assignment of failing grades or points to my examination, distortion, falsification,

erasing, and changing the contents of my examination to justify your arbitrary, racial, discriminatory and illegal action of failing me, informing the reader(s) and grader(s) to give less than deserving thoughts or grades or points to the contents of my examination, and covering up or holding or even destroying related evidence such as the answers and explanations on the basis of which the examination was meant to be graded, refusing to meet with me eyeball to eyeball to challenge and rebut your arbitrary decision and action, etc.) were all expected since February 25, 1987. As of that date, it was just a matter of waiting to get from you the objective evidence to point out what you had done, for objective experience attests to the fact that actions speak louder than words.

In the letter you sent me on February 5, 1987, you said that my results on the essay and multistate examinations would reach me no later than mid-April, 1987, (i.e., April 15, 1987). Instead of sending me the two results, which you had in your possession, no later than April 15, 1987, you informed the Tennessee board of law examiners on April 11, 1987, that you did not pass me on the essay examination, and then the Tennessee board of law examiners sent me a letter to inform me that you did not pass me on the essay examination.

The fact that the Tennessee board of law examiners' letter of April 11, 1987, shows that you did not inform the Tennessee board of law examiners and in turn the Tennessee board of law examiners did not inform me that you failed me on the multistate examination meant that I earned passing scores on the multistate examination. But the fact that in your letter of April 11, 1987, you held back my scores on the multistate exam and you refused to inform me of my scores no later than April 15, 1987, meant that you wanted to know how I would react to your failing me on the essay examination. In that if I did not challenge your decision and action, you would not change and reduce my scores on the multistate examination, thereby compelling me to give

you more money only for the essay examination for as long as you wanted it. But if I challenged your decision and action, you would arbitrarily change and reduce my scores on the multistate examination, thereby compelling me to give you even more money for both the essay and multistate examination for as long as you wanted it.

On April 14, 1987, I challenged your decision and action on the essay exam, and so you not only arbitrarily changed and reduced my scores on the multistate examination, but also wrote on April 22, 1987, to tell me what you had done. Strangely, unlike the first letter written by the Tennessee board of law examiners on April 11, 1987, which showed that you informed the Tennessee board of law examiners and in turn the Tennessee board of law examiners informed me that you did not pass me on the essay examination, the letter you wrote on April 22, 1987, showed not only that the Tennessee board of law examiners did not write me but also showed that you unilaterally and arbitrarily changed your mind and decided to fail me on the multistate examination, and you wrote to inform me of what you had done.

Even more strange is the fact that the letter that was written by the board of law examiners on April 11, 1987, was addressed to all the parties whom you failed on the essay examination, but your letter of April 22, 1987, was addressed to me alone. Worst of all, your letter of April 22, 1987, was written after I challenged your initial decision and action to fail me on the essay examination, and the fact that your letter of April 22, 1987, was not sent to all whom you failed on the multistate examination suggests that it was sent only to the bar candidate who challenged your initial decision and action.

The thinking and inquiring mind cannot help but ask: (1) Is the sum total of your decision and action different from a monetary-extortion scheme, or a record-falsification scheme, or a record-misrepresentation scheme, or a fact-distortion scheme, etc.? (2) Was the February 25 and 26, 1987, Tennessee bar

examination a mere exercise of arbitrary discretion in disguise to exclude minority bar candidates?

Experience in life dictates the fact that actions speak louder than words. The above are the facts flowing from the decision and action you have taken relative to me in the time period from February 25, 1987, up to and including April 22, 1987.

You test bar candidate's knowledge of the law, but you do not know that when the law establishes deadlines they are either met with no penalty, or missed with a penalty. Your failure to report to me my scores on April 15, 1987, implied that you were illegally changing and reducing them.

You test bar candidate's knowledge of the law, but you do not know that the law requires, not empty and useless symbols like numbers and words but rather, substance to prove objectively the meaning of numbers and words. Thirteen days ago, I requested you to send me copies of substantive essays, answers, and grading explanations to be read, compared, contrasted, analyzed, and evaluated by judicious minds in other institutions like the federal courts, law schools, the CBS 60 Minutes Program, the American Civil Liberties Union, the NAACP, the United States Civil Rights Commission, not to mention the thinking and inquiring minds residing in the public-at-large, to test out your arbitrary decision and action. This is not unusual, for in the pages of the Magna Charta, the central pillar upon which our American legal system, Constitutional and statutory laws, have rested, one finds these words:

> "...no freeman shall be taken or imprisoned or deprived of his freehold or his liberties or free customs, or outlawed or exiled, or in any manner destroyed, nor shall we come upon him or send against him, except by a legal judgment of his peers or by the law of the land."

Instead of sending me substantive matters, you have done nothing but sent empty and useless words and numbers. The case between you and me is, not over empty and useless words and numbers but rather, over substantive matters. Are you covering up the substantive matters for fear that they will expose your arbitrary, racial, discriminatory and illegal actions? If not, why hide them? Could it be that you acted without any substantive matters such as objectively verifiable answers and grading explanations?

In 3 years, or 27 months, or 96 weeks, or 480 days, or 11,520 hours, 47 law professors taught and tested me in 30 courses in the field of law, or 30 subfields of law, or 30 specialities in the fields of law, and with readiness and willingness, the 47 law professors stood ready to objectively explain the strengths and weaknesses of my tests, and I came out with an average of 87.50, cum laude. But 3 persons with an administrator known as a board of law examiners in 12 hours tested me in 9 of the same legal subjects, and while it refused to explain objectively how and why, the Tennessee board of law examiners in mere empty words said that it did not intend to pass me on the Tennessee bar examination.

Comparatively, which of the test results best point out my knowledges, skills and abilities, the tests of 47 known law professors who had nothing to hide and cover up relative to the tests they gave me, or the test by 3 unknown persons called the Tennessee board of law examiners who had all to hide and cover-up but nothing to present to the public as objective proof of what they used to grade the test they gave me? The professional judgment of 47 known professors of law versus the opinion of 3 unknown persons is the issue that must be decided in the Court of the thinking and inquiring minds of the public-at-large.

You did not surprise me when you wrote me on April 22, 1987, to inform me that you again changed and reduced my scores on the bar examination because I challenged your first

arbitrary, racial, discriminatory, and illegal action and decision in changing and reducing my scores on the Tennessee bar examination.

However, the first thing that surprises me is that you did not erase and remark wrongly all the correct answers on my multistate portion of the February 25 and 26, 1987, Tennessee bar examination, and as a result give me zero for all 200 multistate questions.

The second thing that surprises me is that you did not distort, falsify, alter, change, and even exclude from consideration on its merits all the correct answers to the 12 essay questions constituting my 24-page essay on the essay portion of the February 25 and 26, 1987, Tennessee bar examination, and as a result give me zero for all the 12 essay questions.

The third thing that surprises me is that you did not go all the way in distorting, falsifying, altering, changing, erasing, and remarking wrongly the contents of my February 25 and 26, 1987, Tennessee bar examination by saying that I was never at the examination site to even sit and take the February 25 and 26, 1987, Tennessee bar examination, and that I failed not only to pay the required fees but also to submit the required bar examination forms.

Finally, in all this, the last thing that surprises me is that you test bar candidates' knowledge of the law, but you do not know that the law, in its subfields of Administrative law and Constitutional law, requires administrators, such as the administrators of the Tennessee bar examination, in all contested cases to strictly adhere to the fundamental principle of *"audi alteram partem"* or *"hear the other side"* principle.

B. Substantive Violations of Carmen R. Stanfield's Rights

The $400 you received from me was my hard-earned financial property, and the contents of the 24-page essay you received

from me was my hard-earned intellectual property. Both constituted my consideration, in that, they were meant to be given to you in exchange, for you to certify me for a license to practice law in the State of Tennessee. While you refused to give me the certification and license to practice law in the State of Tennessee, you not only held on tightly to my financial and intellectual properties, but also denied me an opportunity to challenge and rebut your decision and action not to certify me for a license to practice law in the State of Tennessee. This not only amounts to a flagrant and blatant deprivation of property without due process of law, but also amounts to a flagrant and blatant violation of my rights guaranteed me by the Constitutional and statutory laws of the United States.[1]

Before federal justices have handed down a ruling in the case against you concerning the February 25 and 26, 1987, Tennessee bar examination, I have no intention to take any more of your bar examinations.

[1] "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 17 Stat. 13 (1971), 42 U.S.C.A. § 1983.

Memorandum

To: Betty W. Horn, Administrator, the Tennessee Board of Law Examiners, the Writer(s), Reader(s), and Grader(s) of the February 25 and 26, 1987, Tennessee bar examination

From: Carmen R. Stanfield, P. O. Box 5688, Nashville, Tennessee 37208

Subject: Formal Request for Refund of My $25

Date: April 29, 1987

Your decision and action only to take, endorse, and encash the $25 check as you did but not to respond to the six (6) requests that preceded the $25 check on the list of items you received from me further factually proved your ill-conceived plan to deliberately, willfully, intentionally, racially, discriminatorily and illegally withhold my passing scores on the February 25 and 26, 1987, Tennessee bar examination to make it seem as though I failed in order not only for you to extort from me money for as long as you want it, but also for you in the end to leave me abruptly and in so doing also to inflict upon me throughout and to the end of my natural life in the State of Tennessee the pains, mental anguish, degradation, humiliation, and suffering by leaving me with neither certification for a license to practice law in the State of Tennessee nor due process and equal protection of the laws in flagrant and blatant violation of the Supreme laws of the land, the Constitutional and statutory laws of the United States.

As you have by now seen from the complaints filed against you with the United States Civil Rights Commission, your illegal, ill-conceived plan is destined to fail in a federal court. To that end, I hereby formally request a refund of my $25 immedi-

ately.

You may illegally decide and act to hold my $25 as you have done in holding the responses to my request for my essay answers, your essay grading explanations, your essay answers to the essay questions, the certification and license to practice law in the State of Tennessee without due process and equal protection of the law. Whatever you do, you can rest assured that the case against you is not only for the recovery from you of my essay answers, your essay grading explanations, your answers to the essay questions, the certification and license to practice law in the State of Tennessee as well as my $25, but also for civil damages several million dollars times the size of the $400 you have taken from me. Indeed, I intend to efficiently and effectively challenge your decision and action with the full force of the following provision of the Civil Rights Act of 1964, as amended:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 17 Stat. 13 (1971), 42 U.S.C.A. § 1983.

Well, as explicitly stated by the above quoted statute, whether or not you refund the $25, you do not escape the civil damages, for you have yet to show cause as to why you should not pay the civil damages as a result of your illegal decision and action on the February 25 and 26, 1987, Tennessee bar exami-

nation case. It would be premature for you to celebrate over the idea that the time required by administrative exhaustion would give you the needed time for you to systematically perfect in the highest degree the falsification, distortion, alteration, change, and reduction of my essay and multistate scores which you have for this reason illegally decided and acted to withohold. As you can see from the above quoted provision of the federal statute, I have at least two options to proceed against you, indirectly and directly. Proceeding against you through the Civil Rights Commission is the indirect option, and to proceed against you personally in a federal court of law is the direct option.

cc: United States Civil Rights Commission

United States Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

June 18, 1987

Ms. Carmen R. Stanfield
P. O. Box 5688
Nashville, Tennessee 37208

Dear Ms. Stanfield:

The United States Commission on Civil Rights recently received your complaint.

The Commission was created by Congress to conduct studies, hold hearings, issue reports, and serve as a national clearinghouse for civil rights information. As such, the Commission has no power to enforce laws or regulations, provide legal or direct remedial assistance, or offer an opinion as to the soundness of your allegations.

In order to be helpful, we have forwarded your complaint to the U.S. Department of Education, the Federal agency which is authorized to help resolve the problem you described. We have asked that they correspond directly with you.

We appreciate the concern and the circumstances which prompted you to write to the Commission.

Sincerely,

Mary V. Avant
Complaints Specialist

United States Commission on Civil Rights
Washington, D.C. 20425

Official Business
Penalty for Private Use, $300

U.S. Mail

Postage and Fees Paid
U.S. Commission on Civil Rights

Ms. Carmen R. Stanfield
P. O. Box 5688
Nashville, Tennessee 37208

United States Department of Education
Region IV
101 Marietta Tower
Atlanta, Georgia 30323

Office of Civil Rights
July 10, 1987

Certified Mail-Return Receipt Requested

Ms. Carmen R. Stanfield
Post Office Box 5688
Nashville, Tennessee 37208

Dear Ms. Stanfield:

Re: Complaint # 04-87-4024

Your complaint filed with the U.S. Commission on Civil Rights has been transferred to this office for processing. It was received on June 30, 1987. You have made allegations regarding procedural violations of your civil rights by the Tennessee State Board of Law Examiners.

The Office for Civil Rights is responsible for the enforcement of:

1. Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in programs and activities that receive Federal financial assistance,

2. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activites that receive funds from the Department of Education;

3. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities funded by the Federal Government; and

4. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age, under certain circumstances, in programs or activities receiving Federal financial assistance.

This office has the authority to enforce the civil rights statutes only in programs and activities that receive or benefit from Federal financial assistance. OCR does not have authority to investigate your complaint because our records indicate that the Tennessee State Board of Law Examiners in Nashville, Tennessee does not receive financial assistance from the Department of Education or an agency that has delegated investigative authority to this Department.

You may wish to pursue your complaint with the Tennessee State Supreme Court at the following address:

Mr. Ramsey Leathers, Clerk
Tennessee State Supreme Court
Tennessee Supreme Court Building
Nashville, Tennessee 37219

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will protect, to the extent provided by law, other personal information which, if released, would constitute an unwarranted invasion of privacy.

I am sorry we could not be of assistance to you and are closing

our file on your complaint as of the date of this letter. If you have questions or if we can be of assistance to you, please do not hesitate to telphone M. H. Fountain of my staff at 404/331-7802.

Sincerely yours,

Jesse L. High
Regional Civil Rights Director
Office for Civil Rights
Region IV

An Equal Opportunity Employer

Department of Education
Regional Office IV
Office for Civil Rights
101 Marietta Tower, Suite 2706
Atlanta, Georgia 30323

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ED 395

Ms. Carmen R. Stanfield
P. O. Box 5688
Nashville, Tennessee 37208

Claim Check No.
209142

Date 7-15

Certified
P 039 682 647
Mail

Plaintiff's Appendix A.39

C. Magistrate's Report of September 30, 1988

In the United States District Court
For the Middle District of Tennessee
Nashville Division

Carmen R. Stanfield, Plaintiff, v. Betty W. Horn, et al., Defendants.	Filed September 30, 1988 No. 3:88-0168 Judge Higgins

Report and Recommendation

I. Introduction

This case was referred to the magistrate pursuant to 28 U.S.C. § 636(b)(1)(B)[a] by the honorable Thomas A. Higgins, district judge, by order dated March 29, 1988. The magistrate was directed to submit proposed findings of fact and recommendations for dispositon of the defendants' motion to dismiss. (docket entry no. 4).

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[a] As stated in the plaintiff's pleadings of April 4, 1989, neither the magistrate nor the district court judge had legal authority under the provisions of 28 U.S.C. § 636(b)(1)(B) to act upon defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. The provisions of 28 U.S.C. § 636(b)(1)(B) state that: "a judge may designate a magistrate to conduct hearings, including evidentiary hearings, and submit to a judge of the court proposed findings of fact and recommendations for disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for **posttrial** relief made by individuals convicted of criminal offenses..."

First, distinctively, the present case by nature is a civil case, as differentiated from and opposed to a criminal case. Second, distinctively, the present case is at the "pretrial" stage, as differentiated from and opposed to the trial stage, not to mention the "posttrial" stage. Third, distinctively, the defendants's pretrial motion of failure to state a claim upon which relief can be granted was filed to dismiss the plaintiff's case at the "pretrial" stage, as differentiated from and opposed to the trial stage, not

Plaintiff, Carmen R. Stanfield, (hereinafter "Stanfield") brings this action under 42 U.S.C. § 1983 alleging that the defendants violated the due process and equal protection provisions of the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964, [42] U.S.C. § 2000e, et seq., in their denial of her application for licensure to practice law.[b] The defen-

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to mention the "posttrial" stage. Fourth, distinctively, the defendants' pretrial motion concerns "failure to state a claim upon which relief can be granted," clearly excepted under the provisions of 28 U.S.C. § 636(b)(1)(A), which state that: "a judge may designate a magistrate to hear and determine any pretrial matter pending before the court **except** a motion...to dismiss for failure to state a claim upon which relief can be granted." Fifth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' motion, the district court judge lacked the authority to assign the defendants' "pretrial" motion to a magistrate. Sixth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' pretrial motion, the magistrate lacked authority to accept, to hear, and to make any recommendation whatsoever concerning the defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. Therefore, the magistrate's recommendation and the district court judge's ruling and order resting wholly on the contents of the magistrate's report and recommendation of September 30, 1988, "adopted and approved" by the district court judge, are without legal effect upon the district court's subject-matter jurisdiction over the plaintiff's case.

[b]As stated in the plaintiff's pleadings of December 1, 1988, in the above quoted passage, the phrase "in their *denial of her application* for licensure to practice law," exemplifies the concept of substitution by taking the vague and ambiguous meaning of the term "application" from the facts of the Feldman case, a case in which the bar applicant, Feldman, filed a defective application, and reading the defective application concept into the facts of the plaintiff's case and in so doing, substituting a set of significant and essential facts in the plaintiff's case with the vague and ambiguous meaning of the term "application" in the facts of the Feldman case. The defect in Feldman's application was that he had not graduated from an American Bar Association (ABA) approved law school. It requires substantive facts and substantive rights to earn the privilege to practice law. The application which the plaintiff submitted to the defendants was approved by the defendants as indicated by the defendants' own words in the defendants' letter dated February 5, 1987: "We...advise that [based on your application] you have been approved to take the Tennessee bar examination to be given on February 25 and 26, 1987." Evidently, the plaintiff's application was not an issue in this case, but rather the defendants withholding from the plaintiff: (a) the right to equal protection of the law as required by the equal protection clause of the Fourteenth Amendment of the United States Constitution, (b) the right to procedural due process of law as required by the due process clause of the Fourteenth Amendment of the United States Constitution, (c) the passing test scores of nine (9) out of twelve (12) correct answers earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, (d) the passing test scores of 175 out of 200 correct

dants are individual members of the Tennessee board of law examiners (hereinafter the "board"); Betty W. Horn, the board's administrator; Charles W. Burson, board president; Lowry F. Kline, the board's vice president; H. Lee Barfield, II, the board's secretary-treasurer. Stanfield is a 1986 law school graduate who was notified in April, 1987 by the board that she failed the Tennessee bar examination.

In essence, Stanfield challenges the Tennessee Supreme Court rule that provides that the sole remedy afforded to an unsuccessful applicant on the bar examination is the right to reexamination and the board's practice not to discuss or review with any applicant the results of such applicant's examination or the responses thereto. Stanfield seeks a declaratory judgment that Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Article 14, Section 4 that established this policy, is unconstitutional. Stanfield also seeks an order directing "the recovery of the plaintiff's test scores of nine (9) out of twelve (12) correct answers on the essay portion and 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination" and "the certification and license of the plaintiff as an attorney-at-law in the State of Tennessee based on the plaintiff's passing test scores on the February, 1987, Tennessee bar examination." Injunctive relief is sought to "require the defendants to file such report as the court deems necessary to evaluate the defendants' compliance with the orders of this

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answers earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, (e) the certification for a license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (f) the license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (g) the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee, (h) personal property right in the plaintiff's 24 8 1/2" x 14" legal size pages of paper on which the plaintiff's legal essay was written, (i) the intellectual and literary property right in the legal essay written by the plaintiff on the plaintiff's 24 8 1/2" x 14" legal size pages of paper, (j) the financial property right in the plaintiff's $25,

court," disbursements pursuant to the Civil Rights Attorney's Fees Awards Act of 1976". (see docket entry no. 1, complaint ¶¶ 1-7, pp. 26-27.) Finally, Stanfield seeks damages against the defendants for $20,000,025.00 that includes $10,000,000.00 in compensatory civil damages and $10,000,000.00 in punitive civil damages.

The defendants moved to dismiss plaintiff's complaint pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure, upon two grounds: (1) the lack of subject matter jurisdiction and (2) for failure to state a claim upon which relief can be granted. For the reasons stated hereinafter, the magistrate recommends that the court grant the defendants' motion to dismiss.

II. Analysis of Complaint*

On February 25, 1987, Stanfield arrived at Tennessee State University to take the Tennessee bar examination that is given in a two-day period. On the first day, the multistate portion of the examination was administered and on the second day, the essay examination was administered to Stanfield. On February 25, 1987, the first day of the examination, Stanfield states she was the first person in a line containing approximately ten (10) persons of 229 persons who took the February, 1987, bar examination. Stanfield claims that she approached a member of the board who held the list containing the names of the February, 1987 bar candidates. The board member "demanded" that

(k) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without discrimination based on race and sex, (l) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without retaliation through the administration of the test scores of the February, 1987, Tennessee bar examination, and (m) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without adverse impact through the administration of the test scores of the February, 1987, Tennessee bar examination.

*As discussed *infra*, upon consideration of a motion to dismiss, the court must accept the factual allegations as correct.

Stanfield produce identification revealing Stanfield's photo, name, race, and sex. According to Stanfield, the member:

> ...carefully observed the plaintiff's name as Carmen R. Stanfield on the plaintiff's identification card, (c) carefully observed the plaintiff's face, color and sex on the plaintiff's identification card as a black and a female, (d) carefully compared the plaintiff's photo showing the plaintiff's race and sex as a black and a female with the plaintiff's physical appearance as a black and a female, (e) carefully noted the exactness between the plaintiff's photo showing the plaintiff's race and sex as a black and a female and the plaintiff's physical appearance showing the plaintiff's race and sex as a black and a female, (f) carefully compared the plaintiff's name on the plaintiff's identification card showing Carmen R. Stanfield with the plaintiff's name on the roster containing the names of the February, 1987, class of Tennessee bar candidates showing Carmen R. Stanfield located among the names bearing the "S" series towards the end of the page, (g) deliberately, willfully and intentionally decided and acted in a nervous, trembling and covering-up manner to mark, and did mark, some identification near the plaintiff's name noting the race and sex of the plaintiff which gave the plaintiff not only reason to wonder at the nervous, trembling and weird behavior of the defendants in nervously covering-up

> and writing the identification mark which the defendants wrote near the plaintiff's name, but also reason to suspect that the defendants had some adverse ulterior motive against the plaintiff.... Id.

After receipt of her test scores on April 11, 1987,[c] Stanfield states first that the board refused to allow a review of Stanfield's

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[c]As stated in the plaintiff's pleadings of December 1, 1988, the above quoted phrase, "After receipt of her test scores on April 11, 1987," exemplifies reading into the facts of the plaintiff's case a phrase suggesting a statement that does not exist in the entire record of the plaintiff's case. The substance of the plaintiff's objection is the fact that April 11, 1987, an essentially indispensable and significant date in the facts of the plaintiff's case is replaced with April 22, 1987, to adversely change the date of the event which is equally essential, indispensable and significant in the facts of the plaintiff's case. Nowhere, and the plaintiff emphatically repeats, nowhere in all the pleadings filed by the plaintiff in the United States District Court for the Middle District of Tennessee, Nashville Division, from February 25, 1988, up to and including August 31, 1988, did the plaintiff ever state that the plaintiff's test scores were received by the plaintiff on April 11, 1987.

On page 10, paragraph 13.1, line 4, of the plaintiff's complaint, what the plaintiff said was that "no quantified test scores earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination were enclosed,...[in the defendants' April 11, 1987, letter to the plaintiff].

On page 101, beginning with paragraph 2 and reading over to page 102, of the plaintiff's memorandum of law for the Court, filed February 25, 1988, the plaintiff clearly stated that:

"Instead of enclosing in the letter [of April 11, 1987] to the plaintiff the required computed test scores for the essay portion and the required computed test scores for the multistate portion, both constituting the reported test scores of the single February, 1987, Tennessee bar examination, the defendants from the very beginning of their letter cited not only their first two policies authorized and protected by Tennessee Supreme Court Rule 7, Article 13, Section 2(a), in these words: 'There is no provision in the Rule for review of examination papers by the applicant,' 'It is the practice of the board that neither the members of the board nor any of the assistants will discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination,' but also cited their third policy authorized and protected by Tennessee Supreme Court Rule 7, Article 14, Section 4 in these words: 'The next bar examination will be given July 29 and 30, 1987...file the enclosed notice of intent and remit the $25.00 application fee no later than April 30, 1987,' by means of which the defendants for all practical purposes and intents meant not only to inform the plaintiff that the defendants can in any injurious ways decide and act upon the plaintiff's earned test scores on the February, 1987, Tennessee bar examination, without any recourse on the part of the plaintiff for any redress, but also to confuse and lead the plaintiff to loose the plaintiff's legal defenses against the defendants." From the passages quoted above from the

examination[d] applying Tennessee Supreme Court Rule 7, Article 14, Section 4. On April 11, 1987, the board notified Stanfield as to the results of her essay examinations that "[u]pon written request addressed to the administrator, the board will furnish to any unsuccessful applicant, a photocopy of each of the applicant's essay examination which did not receive a passing grade. (see docket entry no. 5, defendants' brief in support of motion to dismiss, exhibit A.) Further, Stanfield was notified that it was the practice of the board not to discuss or review with

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plaintiff's pleadings filed in this case, it is abundantly clear that no quantified test scores were ever sent to the plaintiff by the defendants on April 11, 1987.

[d]As stated in the plaintiff's pleadings of December 1, 1988, the statement that "...Stanfield states first that the board refused to allow a review of Stanfield's examination..." does not exist in the entire record of the plaintiff's case. The meaning of the statement is given substance by the facts of the Hampton case wherein Hampton petitioned the board for a hearing, but the board refused. The substance of the plaintiff's objection is the fact that reading into the original facts of the plaintiff's case a statement that does not exist in the original facts of the plaintiff's case not only changes adversely the facts of the plaintiff's case into what they are not, but also adversely leads to an adverse conclusion which adversely affects the substantive rights of the plaintiff. On page 12, paragraph 14, sentence one, of the plaintiff's complaint, the plaintiff stated: "On April 14, 1987...the plaintiff challenged the defendants to produce documentary evidence that can prove by irrefutable facts the defendants' allegation that the plaintiff earned no passing scores on the essay portion of the February, 1987, Tennessee bar examination." The first thing the plaintiff asked for clearly was not "review of Stanfield's examination," but rather documentary evidence specifically stated on pages 34-35 of the plaintiff's appendix to the plaintiff's complaint as follows: "(1) a legible and neat photocopy of each of the two 8 1/2" x 14" legal size pages on each of the 12 questions totalling 24 pages I wrote on the essay portion of the February 25 and 26, 1987, Tennessee bar examination, (2) legible and neat copies of the objectively measurable, invariable, certain, known, and specific answers required, and used by you, members of the board of law examiners...to read and grade the answers I gave in the essay portion of the February 25 and 26, 1987, Tennessee bar examination, (3) legible and neat copies of the objectively measurable, invariable, certain, known and specific explanations of the objectively measurable, invariable, certain, and known specific rules of law and their applications which you...required but failed to see in the answers I wrote in the essay portion, (4) incontrovertible proof of the criterion-related validity of your...examination and your invariable answers...(statistical relationship between scores and measures of job performance), (5) incontrovertible proof of the content validity of your... examination (proof that your...examination and your invariable answers ...representatively sampled significant parts of the job of an attorney-at-law) and (6) incontrovertible proof of the construct validity of your... examination and your invariable answers (proof of the identification and measurement of the presence and degree of the trait or construct which underlies successful performance on the job as an attorney-at-law).

any applicant the results of any applicant's examination or the responses of an applicant to any essay questions. Furthermore, Stanfield was advised that she "[would] be notified in writing of [her] essay grades by question and multistate scores by subject"; and that [t]here [was] no provision in the rule for review of examination papers by the applicant." Id. Finally, Stanfield was advised of the date of the next bar examination. A notice of intent to retake the examination was included.

Stanfield alleges that the April 11, 1987, notice was deficient because it failed to enclose the essay [portion of the examination and also scores to mention her failure on the multistate portion of the examination].[e] On April 14, 1987, Stanfield wrote the board requesting the board to produce documentary evidence that she had failed the February 25-26, 1987 bar examination. Stanfield also tendered a check for $25.00 with a signed notice of intent to retake the examination.[f] (docket entry no. 1, appendix A.4.)

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[e]As stated in the plaintiff's pleadings of December 1, 1988, nowhere in all the pleadings filed by the plaintiff in the United States District Court for the Middle District of Tennessee, Nashville Division, did the plaintiff make the following statement quoted above: "...that the April 11, 1987 notice was deficient because it failed to enclose the essay portion of the examination and also scores to mention her failure on the multistate portion of the examination". The simple fact is that the above quoted statement is contrary to fact.

On the defendants' own passing scale, seven (7) out of twelve (12) correct answers was a passing test score on the essay portion of the February, 1987, Tennessee bar examination and the plaintiff earned the passing test score of nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination. The substance of the "deficiency" meant by the plaintiff consisted of cheating, lying, racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, unfairness, injustice, vindictivenss and retaliation committed by the defendants against the plaintiff and the violations of the plaintiff's federally created, guaranteed and protected rights by the defendants.

[f]As stated in the plaintiff's pleadings of December 1, 1988, the check the plaintiff "tendered for $25.00 with a signed notice of intent to retake the examination" was very much conditional, but the original facts of the plaintiff's case were restated by the magistrate to make them seem as though the $25 check was unconditionally given to the defendants by the plaintiff. The conditional nature of the tendered $25 was

On April 17, 1987, Stanfield lodged another complaint [actually a notice of violation, as opposed to a complaint, was sent to the board] with the board regarding alleged violation of her rights. Id. at appendix A.9.

On April 23, 1987, Stanfield sent the board notice of her intent to file a complaint with the United States Civil Rights Commission. Id. at appendix A.18. On the same date, Stanfield filed a complaint with the United States Civil Rights Commission making essentially the same allegation as in this case, i.e., that the board had failed to present "irrefutable proof" that she had not passed the bar examination. Subsequently, the United States Civil Rights Commission forwarded Stanfield's complaint to the United States Department of Education. The Department of Education refused to investigate Stanfield's complaint.

On April 22, 1987, the board advised Stanfield that she passed eight (8) out of twelve (12) essay questions and 123 out of 200 correct questions on the multistate portion of the examination.[8] Shortly thereafter, on April 29, 1987, Stanfield

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clearly stated on pages 12-13 of the plaintiff's complaint in these words: "In the expectation that the defendants who are the practitioners and the examiners of legal professional responsibility required of bar candidates in Tennessee would in the exemplification of legal professional responsibility produce documentary evidence not only for both the defendants and the plaintiff to examine the irrefutable facts explaining and substantiating the allegation of a failure on the essay portion of the February, 1987, Tennessee bar examination, but also for the plaintiff to see, understand and avoid the contested and irrefutably proven facts of the alleged failure in a subsequent bar examination, the plaintiff conditionally forwarded to the defendants a personal check...in the amount of $25 as fees together with a signed notice of intent form to take a second Tennessee bar examination..." and plaintiff went on to state in plaintiff's pleadings that "...Clearly to give you [the defendants] the attached $25 check you [the defendants] requested is no admission that your [the defendants'] empty words are true [concerning the defendants' allegation that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination.]".

[8]As stated in plaintiff's pleadings of December 1, 1988, and as ommitted by the magistrate in the magistrate's report, on the critical reporting date of April 11, 1987, the plaintiff learned that the plaintiff passed the multistate portion of the February, 1987, Tennessee bar examination. Eleven (11) days later when the defendants used the plaintiff's complaint charging the defendants with the commission of fraud, deception, equivocation, vindictiveness, retaliation, arbitrariness, capriciousness,

requested that the board return her $25.00[h] fee since the board failed to comply with her request to prove that she earned no passing test scores in the February, 1987 bar examination. Id. at 20.

On May 13, 1987, Stanfield alleges Betty Horn informed her by written letter that the board would increase her test scores from eight (8) to nine (9) correct answers "provided that the plaintiff without any objective evidence in advance agree that plaintiff earned no passing scores on the multistate portion of the February, 1987 Tennessee bar examination." Stanfield declined the board's offer[i] and filed her complaint on February 25, 1988.

Stanfield further contends that since the date that she took

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racism, sexism, discrimination, imposition, unfairness, injustice, cheating and lying against the plaintiff on the essay portion to announce a reduction in the plaintiff's passing test scores on the multistate portion, the plaintiff sued the defendants, among other reasons, for illegal retaliation. On April 22, 1987, the defendants only reported eight (8) of the nine (9) out of twelve (12) correct answers meritoriously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination although the defendants were still withholding, covering-up, concealing and hiding from the plaintiff one more correct answer meritously earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination. The defendants' vindictive and retaliative letter of April 22, 1987, showed two reduced scores on the multistate portion of the examination. The first multistate score was reduced from 175 to 170, a reduction of 5 points. The second mulistate score was reduced from 175 to 123, a reduction of 52 points. Therefore, the restatement of the original facts in the magistrate's report adversely changes the original facts in the plaintiff's case.

[h]As stated in the plaintiff's pleadings of December 1, 1988, the magistrate's statement that "...Stanfield requested that the board return her $25.00 fee since the board failed to comply with her request to prove that she earned no passing test scores in the February, 1987 bar examination," is a clear understatement of the facts in this case. On the defendants' reporting date of April 11,1987, the defendants alleged that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination. As of that date, the single and only issue between the plaintiff and the defendants consisted of the essay test scores which required facts to prove whether or not they were passing test scores. The established proof, which came directly from the defendants in the defendants' letter of April 22, 1987, that they were passing test scores dictated the necessity for the plaintiff to demand a refund of the plaintiff's $25 from the defendants.

[i]As stated in the plaintiff's pleadings of December 1, 1988, the plaintiff established the fact that the defendants, in secrecy and behind closed doors, graded the plaintiff's February, 1987, Tennessee bar examination papers and the defendants defrauded the plaintiff of the quantified test scores earned by the plaintiff. The plaintiff exposed the defendants' fraudulent scheme and also charged the defendants with racism, sexism, discrimination, imposition, fraud, deception, equivocation, vindictiveness, retaliation, arbitrariness, capriciousness, unfairness, injustice, cheating, lying, etc.

the bar examination and up to the date of this complaint, the defendants through their enforcement of Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Tennessee Supreme Court Rule 7, Article 14, Section 4, have continued to commit against her "the acts of racism, sexism, discrimination, imposition, fraud, deception, arbitrariness, capriciousness, manifest unfairness and injustice." Stanfield alleges that this practice began when (1) the board employed an identifying mark to note on the roster of applicants for the February, 1987 bar examination that she was black and female; and (2) when the board refused to discuss or review her examination with her.[1]

Stanfield further states that as a result of the February 25,

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Under the above set of circumstances, if the plaintiff were to give the defendants the second chance to regrade the plaintiff's February, 1987, Tennessee bar examination papers in secrecy, the defendants would definitely commit more fraud against the plaintiff. It is against the dictates of prudence, or the law of self-preservation, for a person who at first got burned nearly fatally by a blazing fire to walk for a second time into another blazing fire. This is no less valid than is seen in the Hampton case wherein the board of law examiners of Tennessee in secrecy and behind closed doors not only graded Hampton's examination papers, but also failed Hampton who sued the board of law examiners of Tennessee; but while the suit was pending, Hampton, acting against the dictates of prudence, or the law of self-preservation, walked into the second blazing fire, so to speak, and took a second Tennessee bar examination administered by the same defendants who in secrecy and behind closed doors graded Hampton's examination papers and, as any ordinary prudent person would expect, the defendants were quick to fail Hamption for the second and decisive time. see Hampton v. Tennessee Board of Law Examiners, 819 F.2d 289 (6th Cir. 1987)(unpublished opinion attached). Evidently, what the magistrate failed to see in and behind these words: "...the board's offer" to increase the plaintiff's test scores from eight (8) to nine (9) correct answers was in fact the defendants'second scheme to defraud the plaintiff of the plaintiff's passing test scores earned by the plaintiff on the February, 1987, Tennessee bar examination. Clearly, in the record of the plaintiff's case, the original facts that preceded the defendants' offer dictated only one meaning for the term "offer" and the meaning was the defendants' bait to continue against the plaintiff the enforcement of the defendants' fraudulent scheme of racism, sexism, discrimination, imposition, fraud, deception, equivocation, vindictiveness, retaliation, arbitrariness, capriciousness, unfairness, injustice, cheating and lying. No meaning beyond this can be found in the original facts contained in the record of the plaintiff's case.

[1]As stated in the plaintiff's pleadings of December 1, 1988, nowhere in all the pleadings filed by the plaintiff in the United States District Court for the Middle District of Tennessee, Nashville Division, did the plaintiff ever state that the plaintiff asked the defendants to discuss or review the plaintiff's examination with the plaintiff. As the magistrate omitted from the relevant facts, the plaintiff clearly requested the

1987 essay portion of the examination, "she could not [and did not] fail to earn meritoriously...at least nine (9) out of twelve (12) correct answers on the essay portion of the bar exam and on February 26, 1987, on the multistate portion, she earned at least 175 out of 200.

III. Conclusions of Law

The defendants move to dismiss this complaint under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure on the basis the court lacks subject matter jurisdiction and the plaintiff fails to state a claim upon which relief can be granted. "A motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction may be made at any time." 2A Moore's Federal Practice ¶ 12.07 [2.-1] "Once the existence of the subject matter jurisdiction is challenged, the burden of establishing it always rests on the party asserting jurisdiction. Id. However, "whenever it appears by suggestion of the parties or otherwise that the court lacks subject matter jurisdiction, the court shall dismiss the action. Federal Rules of Civil Procedure 12(h)(3).

With respect to a Rule 12(b)(6) motion, as a general rule a complaint should not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff can prove no set of facts in support of her claim which would entitle her to

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defendants to send the plaintiff six (6) sets of irrefutable facts stated above and the defendants have yet to comply with the plaintiff's request for the six (6) sets of irrefutable facts.

The plaintiff's objections to the statement and conclusion of facts in the magistrate's report were substantiated in the plaintiff's objections of December 1, 1988, specifically enumerating facts of the substitution of the facts of the plaintiff's case with the incompatible facts of the Feldman case and the Hampton case as well as putting into the facts of the plaintiff's case statements which in form and substance were never in the record of the plaintiff's case and which have no basis in fact. Not only do these adversely change the facts of the plaintiff's case into what they are not, but also they adversely lead to an adverse conclusion which adversely affects the substantive rights of the plaintiff.

relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); Myers v. United States, 636 F.2d 166, 168 (6th Cir. 1981). Further, as noted in Conley, "the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which [she] bases [her] claim. [A]ll the Rule requires is a short and plain statement of the claim." Id. at 48.

In a word, the test under Rule 12(b)(6) is whether a claim has been adequately stated in the complaint. Nishiyama v. Dickson County, 814 F.2d 277, 279 (6th Cir. 1987). In considering a Rule 12(b)(6) motion, the court must accept as true, all factual allegations in the complaint; but not conclusory allegations. Id. at 279, citing Windsor v. The Tennessean, 719 F.2d 155, 158 (6th Cir. 1983)*cert. den.* 469 U.S. 826 (1984). In determining if the allegations are sufficient, the court may look to the complaint and any amendments, and any documents or exhibits incorporated by reference in the complaint or its amendments. Goodman v. Bolden, 754 F.2d 1059 (2nd Cir. 1985).

As to the court's lack of subject matter jurisdiction, the Supreme Court has recognized there is a subtle but fundamental distinction in two types of claims that are brought by unsuccessful state bar applicants in federal courts: "The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on a constitutional or other grounds, that the state has unlawfully denied a particular applicant admission." D. C. Court of Appeals v. Feldman, 460 U.S. 462, 485 (1983) 103 S.Ct. 1303, 75 L.Ed.2d 206. As to the first type of claim:

> The United States district courts therefore, have subject-matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings which do not require review of a

> final state-court judgment in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. [The second type of claim must be heard] "if at all, exclusively by the Supreme Court of the United States." D.C. Court of Appeals v. Feldman, 460 U.S. at 462.[k]

The distinction between claims about state bar rules and claims that a state court has unlawfully denied a particular applicant admission is often difficult to draw.[l] Razatos v. Colorado Supreme Court, 746 F.2d 1429, 1433 (10th Cir. 1984) *cert. deni.* ___ U.S.___, 105 S.Ct. 2019, 85 L.Ed. 2d 301 (1985). *See also* Nordgvea v. Hafter, 789 F.2d 334 (5th Cir. 1986). The Supreme Court, in distinguishing the two claims stated:

> "We have recognized that state supreme courts may act in a nonjudicial capacity in

[k]As stated in the plaintiff's pleadings of October 17, 1988, this quotation supports the plaintiff's case and upholds the subject-matter jurisdiction of the United States District Court for the Middle District of Tennessee, Nashville, Division, in the plaintiff's case because Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Tennessee Supreme Court Rule 7, Article 14, Section 4, both of which the plaintiff challenges as unconstitutional under the federal constitutional and statutory laws are Tennessee "state bar rules, promulgated by [Tennessee] state courts in nonjudicial proceedings" and the Tennessee Supreme Court has neither held a judicial proceeding nor rendered "a final state-court judgment" in the plaintiff's case.

[l]As stated in the plaintiff's pleadings of October 17, 1988, if at all there is any difficulty for the magistrate, the difficulty lies, not in making the distinction, but rather in the mind of the magistrate, for the simple fact is that the present case contains no "final state court judgment" or decision and the magistrate is trying to ...fabricate

promulgating rules regulating the bar ....Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States District Court to review a final state-court judgment in a judicial proceeding. Instead, the District Court may simply be asked to assess the validity of a rule promulgated in a nonjudicial proceeding. If this is the case, the District Court is not reviewing a state-court judicial decision. In this regard, 28 U.S.C. § 1257 does not act as a bar to the District Court's consideration of the case and because the proceedings giving rise to the rule are nonjudicial the policies prohibiting United States District Court review of final state-court judgments are not implicated. United States District Courts, therefore, have subject-matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case."[m] Feldman, 460 U.S. at 485-86, 103 S.Ct. at 1316-17. (citations omitted)

"a final state-court judgment" or judicial decision that does not empirically exist and this presents the difficulty that exists in the magistrate's mind.

[m] As stated in the plaintiff's pleadings of October 17, 1988, this quotation of the magistrate clearly supports and upholds the subject-matter jurisdiction of the United States District Court for the Middle District of Tennessee, Nashville Division, in the plaintiff's case, first because there is no "final state-court judgment" in a judicial proceeding and second, because the plaintiff challenged the federal constitutionality of Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' seventeen (17) administrative discretionary enforcement rules, policies and practices

However, the Court observed that:

If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state court decision. This the district court may not do.[n]

Thus, jurisdictional scrutiny on Stanfield's claims must focus upon whether the issues Stanfield presents are a general constitutional challenge to bar admission rules and practices thereunder and or whether such challenge is "inextricably intertwined" with the board's decision to deny Stanfield's application for admission to the Tennessee bar.[o] Feldman, 450 U.S. at 483, n. 16, 486-87, 103 S.Ct. at 1316, n. 16, 1316-1317.

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all of which are "nonjudicial" promulgated rules and purely administrative rules, which, as in the present case, do not require the U.S. District Court to review "a final state-court judgment" of the Tennessee Supreme Court handed down in the plaintiff's case.

[n]As stated in the plaintiff's pleadings of December 1, 1988, this quotation from the magistrate's report exemplifies the substitution of the legal issues of the plaintiff's case with the legal issues of the Feldman case. In direct opposition to the legal issues of the Feldman case, the plaintiff has not called upon the U.S. District Court to review any judicial proceedings with a judicial decision either rendered by the board of law examiners or rendered by the Supreme Court of Tennesee because no judicial proceeding with a judicial decision ever existed in the facts of the plaintiff's case.

[o]As stated in the plaintiff's pleadings of December 1, 1988, this statement made by the magistrate exemplifies the substitution of the legal issues of the plaintiff's case with the legal issues of the Feldman case. In direct opposition to the legal issues of the Feldman case, the plaintiff's claims under federal laws are not in any way inextricably intertwined with a board decision within the meaning of the contested case principle because Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' 17 administrative discretionary enforcement rules, policies and practices did not permit any administrative hearing or any quasi-judicial hearing to take place between the plaintiff and the defendants as a result of which the defendants could render an administrative or a quasi-judicial decision.

[Tennessee Supreme Court] Rule 7, Article 14, Section 4, provides that "[t]he only remedy afforded for a grievance for failure to pass the bar examination shall be the right to re-examination as herein provided." As to reexamination, Rule 7, Article 13, Section 2(a) states that "[i]n case of failure on examination the board may, in its discretion, allow the applicant to take another examination upon the filing of the notice of intent."[p]

Pursuant to these rules, "upon written request addressed to the administrator, the board will furnish to any unsuccessful applicant a photocopy of each of such applicant's essay examination answers which did not receive a passing grade."[q] *(see* docket entry no. 5, exhibit B, attachment thereto.) Further, it is the practice of the board "[not to] discuss or review with any individual applicant the results of such applicant's examination or the responses of such applicant to any essay questions on the examination. Id.

Here, Stanfield's complaint in her prayer for relief, requests

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[p]As stated in plaintiff's pleadings of October 17, 1988, this statement made by the magistrate who has, in part, used this statement to recommend the dismissal of the plaintiff's case, conclusively and decisively proves that in all matters relating to the present case the magistrate is unreliable, undependable and, in short, lacking credibility. The simple fact is that the magistrate's statement is totally and completely false. The correct provisions of Tennessee Supreme Court Rule 7, Article 13, Section 2(a) clearly states as follows: "Any person who is aggrieved by any action of the board involving or arising from the enforcement of this rule (other than failure to pass the bar examination) may petition the board for such relief as is within the jurisdiction of the board to grant." The correct reading of Tennessee Supreme Court Rule 7, Article 13, Section 2(a), clearly supports the fact stated by the plaintiff in the present case that the defendants never accorded the plaintiff either an administrative hearing or a quasi-judicial proceeding in which any "final-state court judgment" or board decision could be rendered by the defendants.

[q]As stated in plaintiff's pleadings of October 17, 1988, in his highly questionable desire to dismiss the plaintiff's case, the magistrate in this statement suggested a willingness to act on the part of the defendants who made an offer to send the plaintiff copies of the plaintiff's examination papers. The fact however is that the magistrate completely and totally ignored or refused to read, understand and know the records of the case before the magistrate wherein the plaintiff in writing several times requested the defendants to send to the plaintiff documentary proof including the plaintiff's essay examination papers, but the defendants repeatedly refused to honor the very words of the quotation the magistrate cited above which is, in part, the very

that the court: (1) declare Tennessee Supreme Court Rule 7, Articles 13, 14, Sections 2(a) and 4 unconstitutional; (2) grant plaintiff a judgment against the defendants "for the recovery of the plaintiff's test scores o[f] nine (9) out of twelve (12) correct answers on the essay and 175 out of 200 correct answers on the multistate portion of the February, 1987 Tennessee bar examination"; and (3) grant the plaintiff a judgment against the defendants "for the certification and license of the plaintiff as an attorney-at-law in the State of Tennessee based on the plaintiff's passing test scores on the February, 1987, Tennessee bar examination."

In the magistrate's view, this action is clearly a challenge by Stanfield to a state court judicial proceeding resulting in the denial of her admission to the Tennessee bar.[r] Here, Stanfield's

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reason that the plaintiff filed this case in federal district court. Why then would the magistrate want to use such a quotation to dismiss the plaintiff's case?

[r]As stated in the plaintiff's pleadings of December 1, 1988, the irrefutable and incontrovertible facts contained in the record of the plaintiff's case caused the magistrate to unequivocally admit that "To be sure, there is no evidence of the formal judicial proceedings," in the Stanfield case, but based on ".. the magistrate's view," the plaintiff's action is a challenge by the plaintiff to a "state court judicial proceeding." Where, on the one hand, in using the facts of the plaintiff's case, the magistrate's report admits that no judicial proceedings ever existed in the facts of the plaintiff's case and later, on the other hand, in using the "magistrate's view," the magistrate states that the plaintiff's case is a challenge "to a state court judicial proceeding", then, there is an irreconcilable conflict between the facts of the plaintiff's case and "the magistrate's view." Second, the board of law examiners of Tennessee does not exercise the "admissions power" of the Supreme Court of Tennessee. Section 1 of Article 9 under Tennessee Supreme Court Rule 7 which deals with "Certificate of Board" clearly states that "...the board, acting through the administrator, shall certify to the Court that an applicant is eligible for admission," and Section 2 of Article 9 under Tenn. Sup. Ct. R. 7 which deals with "Issuance of License" clearly states that "...the Court shall issue a license admitting each successful applicant to the bar of Tennessee." To administer the activities which determine eligibility for certification is not the same as the exercise of the ultimate power granting a license which ultimately admits a person into the bar. The board of law examiners exercises the former which entails purely administrative decision and the Supreme Court of Tennessee exercises the latter which equally entails purely nonjudicial decisions for want of legally contested cases. Even if both sets of administrative decisions were made exclusively either by the board or by the Supreme Court of Tennessee, the two sets of decisions would still be nonjudicial decisions for want of legally contested cases and indeed they would be subject to review by the United States District Court within the meaning of Feldman.

It requires seven (7) out of twelve (12) correct answers on the essay portion to pass

contentions are that she satisfactorily passed the Tennessee bar examination with the requisite answers required under the board's rules and that the board in its application of the rules exercises the Tennessee Supreme Court's admissions power. *see* Tenn. Code Ann. § 23-401 (1980). To be sure, there is no evidence of the formal judicial proceedings, but the Supreme Court has instructed that "the form of the proceeding is not significant. It is the nature and effect which is controlling." Feldman, 460 U.S. at 482. The board's administration of the rules, i.e., to deny Stanfield admission for failure to pass the Tennessee examination as required by the board's rule, is sufficient for the magistrate to conclude that the board acted in a judicial capacity within the meaning of Feldman. Thus,

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the essay portion of the February, 1987, Tennessee bar examination. Plaintiff earned nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination. In effect, the plaintiff passed the essay portion of the February, 1987, Tennesssee bar examination. The defendants sent eight (8) out of nine (9) correct answers to the plaintiff and withheld one (1) of the nine (9) correct answers from the plaintiff. Plaintiff requested the defendants to send the plaintiff the remaining correct answer to the essay portion of the February, 1987, Tennessee bar examination. But the defendants refused to do so until the defendants are permitted to wrongfully withhold fifty-two (52) points earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination.

The facts of the plaintiff's case show that notwithstanding the fact the plaintiff earned nine (9) out of twelve (12) correct answers, eight (8) of which the defendants later sent to the plaintiff, the defendants in mere empty words wrote the plaintiff to say that the plaintiff failed the essay portion of the February, 1987, Tennessee bar examination. The plaintiff, among other charges, charged the defendants with fraud, deception, equivocation, vindictiveness, retaliation, arbitrariness, capriciousness, unfairness, injustice, racism, sexism, discrimination, imposition, cheating, lying, etc.

The facts in the plaintiff's case show that the plaintiff earned 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination. On April 11, 1987, the defendants informed the plaintiff of no failure on the multistate portion of the February, 1987, Tennessee bar examination. On April 23, 1987, the plaintiff filed a complaint against the defendants with the U. S. Civil Rights Commission and on April 24, 1987, that is 13 days after the official reporting date which was April 11, 1987, the defendants wrote the plaintiff to say in mere empty words that the plaintiff earned no passing test scores on the multistate portion of the February, 1987, Tennessee bar examination. The plaintiff charged the defendants with deliberate, willful, intentional and fraudulent reduction of the plaintiff's test scores on the February, 1987, Tennessee bar examination and an outright illegal commission of retaliation and vindictiveness against the plaintiff.

Does the defendants' fraudulent reduction of plaintiff's test scores from 9 and 175 to 8 and 123 on the essay and multistate portions of the February, 1987, Tennessee bar examination, respectively, mean the performance of "a state court judicial pro-

Stanfield's request for review of specific action as to her own application is beyond the district court's subject matter jurisdiction.[5]

Arguably, the board's decision not to review or discuss Stanfield's examination or the responses in accordance with Rule 7, and in particular Article 13, Section 2(a) and Article 14, Section 4, present a constitutional claim. However, this challenge is likewise "inextricably intertwined" with the state court

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ceeding," or the exercise of "the Tennessee Supreme Court's admissions power," or the acting "in a judicial capacity within the meaning of Feldman" in which the plaintiff was given an opportunity to be heard and rebut the unsubstantiated allegation of a failure?

[5]As stated in plaintiff's pleadings of October 17, 1988, and December 1, 1988, the "specific action as to [the plaintiff's application]" was never an issue in this case. The issue was the "specific [adverse] action as to [the plaintiff's test scores]" under color of law, Tenn. Sup. Ct. R. 7, §§ 13.02(a) and 14.04 and defendants' 17 administrative discretionary enforcement rules, which the magistrate failed or refused to see, understand and know. The February, 1987, class of Tennessee bar candidates who took the February, 1987, Tennessee bar examination consisted of 226 examinees of whom the plaintiff was one. Up to February 25, 1987, Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices were in the possession of the defendants and were on the rule book. On February 25, 1987, all the 226 Tennessee bar candidates who took the February, 1987, Tennessee bar examination were subject to the legal effects of Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices. From February 26, 1987, up to and including September 30, 1988, succeeding classes of Tennessee bar candidates who took the Tennessee bar examination were equally subject to the same legal effects of Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices. Until revised to conform to the requirements of federal laws, Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices will have the same effects upon future classes of Tennessee bar candidates who will take the Tennessee bar examination. Of the 226 Tennessee bar examinees who took the February, 1987, Tennessee bar examination, 97 examinees, including the plaintiff, were alleged by the defendants to be unsuccessful and in effect, 97 examinees who took the February, 1987, Tennessee bar examination were adversely affected by Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices as a result of the defendants' allegation. Among the 97 examinees, the plaintiff, on February 25, 1988, requested the United States District Court to review Tenn. Sup. Ct. R. 7, §§ 13.02(a) and 14.04 and the defendants' 17 administrative discretionary enforcement rules, policies and practices. Both the plaintiff's request and the Court's review and findings had in store legal benefits, the protection of legal rights not only for the 97 members of the 1987 class of Tennessee bar candidates who took the February, 1987, Tennessee bar examination, but also for all succeeding classes of Tennessee bar

decision, Id.[1] 460 U.S. at 486-87, because to resolve this issue, the court:

> "would have to go beyond mere review of the state rule as promulgated, to an examination of the rules as applied by the [board in administering the rules of the Supreme Court]

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candidates. If Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' 17 administrative discretionary enforcement rules, policies and practices were reviewed and found unconstitutional and illegal under federal Constitutional and statutory laws by the federal district court on February 25, 1988, the bar examinees whom the defendants alleged were unsuccessful between February 25, 1988, and September 30, 1988, would have had an unprecedented privilege of legal protection of their legal rights in the federal district court. Therefore, the statement in the magistrate's report that "...Stanfield's request for review of specific action as to her own application" is contrary to the facts because it failed to consider the fact that Tennessee Supreme Court Rule 7, §§ 13.02(a) and 14.04 and the defendants' administrative discretionary enforcement rules, policies and practices affect all law school graduates who take the Tennessee bar examination.

[1]As stated in the plaintiff's pleadings of December 1, 1988, there are three fallacies in this statement made by the magistrate. The first fallacy is found in the words "board's decision". The magistrate assumes that the "board" held a quasi-judicial proceeding at which the plaintiff and the defendants were present and contested the plaintiff's case and from which contest the "board" rendered a quasi-judicial decision. But the magistrate produced no recorded and reported state case containing the proceedings in which one can find the "board's" [quasi-judicial] decision. The second fallacy is found in the words "state court decision." The magistrate again assumes that a state court held a judicial proceeding at which the plaintiff and the defendants were present and contested the plaintiff's case from which contest the state court rendered a final "state court decision". But the magistrate produced no recorded and reported state case containing the proceedings in which one can find this "state court decision." To accept both fallacies of a "board's decision" and a "state court decision" is to accept the proposition that the defendants and a state court rendered a quasi-judicial or judicial decision in a case which has neither a plaintiff nor a defendant. The third fallacy is found in the words "inextricably intertwined". The magistrate's report assumes that the plaintiff first took the plaintiff's case to the defendants who rendered a quasi-judicial or "board's decision" and, second, the plaintiff took the plaintiff's case to a state court which rendered a final judicial "state court decision" and, finally, the plaintiff brought the same case to the federal district court for a judicial decision. By means of this assumption, the magistrate fallaciously reads the facts of the Hampton case and the Feldman case into the plaintiff's case.

The fallacy forces two results adversely affecting the substantive rights of the plaintiff. The first result is that the facts of the plaintiff's case are the same facts which were considered by the defendants, the state court and now to be considered by the federal district court. In this sense, the facts are "inextricably intertwined." The second result is that the same set of facts produced the "board's decision," and the "state court decision" and now are to produce the federal district court decision. Since the facts were "inextricably intertwined" in each of the two previous hearings,

to the particular factual circumstances of [Stanfield's case], Federal courts **do not** have jurisdiction over constitutional claims challenging the state's power to license attorneys or their rule-making authority or administration of the rules."[u] Hampton v. Tennessee Board of Law Examiners, No. 86-2476 (W.D. Tenn. 1986)(*affirmed* Hampton v. Tennessee Board of Law Examiners, 819 F.2d 289 (6th Cir. 1987) unpublished opinion attached) citing Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976)*cert.* 431 U.S. 916 (1977).

Because Stanfield attacks the manner in which the state rules were applied to her bar application, her remedy, if any, must be

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the decisions in each of the two previous hearings were equally "inextricably intertwined." The magistrate failed to produce any recorded records of the two separate judicial proceedings in which the plaintiff and the defendants were allegedly present and contested the plaintiff's case and from which contest two separate judicial decisions were rendered to provide the material and conclusive proof of the inextricable intertwinement between the two decisions which would bar the United States District Court from any other consideration of the plaintiff's case. The simple fact is that the plaintiff never participated in any quasi-judicial or judicial proceeding either before the "board" or any state court, trial or final state court in which a "board's decision" or a final "state court decision" was ever rendered.

[u]As stated in the plaintiff's pleadings of October 17, 1988, the magistrate is completely and totally wrong in using distortions, misrepresentations, falsifications, misquotations and misinterpretations of any federal rule of law as grounds upon which to dismiss the plaintiff's case. The inevitable findings of a very careful comparison of the following rule of law, one used in the Doe case, the Feldman case and the Hampton case which the magistrate deliberately, willfully and intentionally falsified in the report, will completely and totally destroy the magistrate's falsified main legal argument against the plaintiff's case concerning the lack of judicial authority by federal district courts to review the power of the state (a) to make rules, (b) to license attorneys, and (c) to administer the rules of the state. The magistrate is completely and totally wrong in his statement that "...Federal courts **do not** have jurisdiction over constitutional claims challenging the state's power to license attorneys or their rule-making authority or administration of the rules." The United States District Court Judge Gibbons is absolutely correct in the Judge's statement in the Hampton case, attached hereto, that: "...Federal courts **do** have jurisdiction over constitutional claims attacking state's power to license attorneys or their rule-making authority or administration of the rules." United States Supreme Court Justice Brennen along with the tenth circuit judge in the Doe case, is absolutely correct in citing the Doe case in the Feldman case decision by stating: "...The Court held that while federal courts **do**

through the Tennessee courts and then by direct appeal to the United States Supreme Court. Hampton, 819 F.2d at 289, *citing* Feldman, Doe v. Pringle. In a word, "plaintiff cannot invoke the jurisdiction of the federal courts by couching [her] claim for relief in terms of 42 U.S.C. §§ 1983 [1985], when she is seeking relief for denial of admission to the bar. Hampton v. Tennessee Board of Law Examiners, 819 F.2d 289 (6th Cir. 1987)(unpublished opinion, copy attached).

Finally, as to Stanfield's Title VII claim,[v] Title VII does not

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exercise jurisdiction over many constitutional claims which attack the state's power to license attorneys involving challenges to either the rule-making authority or the administration of the rules,...". The very seriousness of the magistrate's above described wrongful, dishonest, deceitful and fraudulent conduct and actions in the plaintiff's case, changing the verb do into the new verb do not, is such that it could only have been motivated by deep-seated biases, prejudices and an unconscionable partiality against the plaintiff's case. To go so far as to not respect or comply with the federal law, as the magistrate has done in this case, did much to erode the public confidence in the integrity and impartiality of the judiciary in this case and was extremely prejudicial to the administration of justice in the plaintiff's case raising within the meaning of 28 U.S.C. § 372(c)(1) [1983] this question: Why shouldn't the magistrate face an appropriate federal judicial board of review to explain as to why the magistrate undertook the above described deliberate, willful, intentional and wrongful distortion, misrepresentation, falsification, misquotation, and misapplication of a well-settled federal rule of law, not to mention simple and crystal clear facts, in the plaintiff's case which can be motivated only by very deep-seated passions, biases, prejudices and unconscionable partiality against the plaintiff and very much in favor of the defendants as evidenced by the magistrate's factually and legally unfounded report and recommendation to dismiss the plaintiff's case with the effect of sustaining the defendants' motion to dismiss the plaintiff's case?

[v]As stated in the plaintiff's pleadings of December 1, 1988, judicially speaking, it is not enough where the substantive rights of a citizen of the United States created, guaranteed and protected by the constitutional and statutory laws of the United States are at stake in a case for a magistrate's report on the case to merely introduce its mere empty words as legal authority without presenting and delving into the substantive facts and the substantive issues of law of a case supporting its words which are calculated to crush the rights of a citizen of the United States. Given a choice between the mere empty words of the magistrate as contained in the magistrate's report under reference and an impeccable legal research on the issue of the application of Title VII to the plaintiff's case, the plaintiff chooses the latter, and as early as February 25, 1988, the plaintiff filed a memorandum of law for the court in which from pages 150, 157-167, and 217-220, the irrefutable and incontrovertible application of Title VII to the plaintiff's case was established as follows:

The government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, is an 'employer' of employees in Tennessee. This implies that the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, creates 'employment opportunities' for

apply because the Tennessee board of bar examiners is neither

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employees, offers 'employment opportunities' to employees and denies employees 'employment opportunities' in Tennessee. The government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, has three branches, namely, the legislative branch, the executive branch and the judicial branch. This implies that the creation of 'employment opportunities' for employees, the offer of 'employment opportunities' to employees and the denial of 'employment opportunities' to employees occur in the legislative branch, the executive branch and the judicial branch of the government of the state of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee.

The government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions affecting other living persons, recruits employees for 'employment' in Tennessee. This implies that the recruitment of employees for 'employment' by the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, occurs in the legislative branch, the executive branch and the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee.

The government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons tests employees for 'employment' in Tennessee by the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee. This implies not only that the test constitutes the substance of 'employment opportunities' for employees in the State of Tennessee, but also that the test as the substance of 'employment opportunities' for employees in the State of Tennessee is created for employees, offered to employees and denied employees in the legislative branch, the executive branch and the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee.

For the positions of appointed judges of the government of Tennessee, appointed staff attorneys-at-law of the government of Tennessee, appointed district attorneys-at-law of the government of Tennessee, appointed law examiners of the government of Tennessee, and for the positions of teaching attorneys-at-law, associated attorneys-at-law and solo attorneys-at-law to serve the public interest in the administration of justice by the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons recruits and tests only law school graduates for 'employment' as attorneys-at-law for the administration of justice by the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee. This implies that the test composed and administered for employees who in fact and in law are under the control of the judicial power to grant and to revoke license of 'employment' as attorneys-at-law exercised over all attorneys-at-law in Tennessee by the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee, constitute the substance of 'employment opportu-

nities' as attorneys-at-law for law school graduates. The testing of law school graduates for 'employment' as attorneys-at-law by the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, is done only by the state law examiners as attorneys-at-law in the 'employment' of the judicial branch of the government of the State of Tennessee, in fact and in law consisting of living persons who make decisions and take actions that affect other living persons in Tennessee. This implies that the state law examiners through the composition and administration of the Tennessee bar examination which constitutes the substance of 'employment opportunities' for attorneys-at-law create 'employment opportunites' as, attorneys-at-law for law school graduates, offer 'employment opportunities' as attorneys-at-law to law school graduates and deny 'employment opportunities' as attorneys-at-law to law school graduates.

Incontrovertibly and irrefutably, it was in this substantive sense of a living human being within or without a government making decisions and taking actions in violation of the provisions of the Constitutional and statutory laws of the United States that adversely affect other living human beings who feel the adverse impact of decisions and actions taken by the former that Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) used the term 'person' ('Section 701. (a) The term 'person' includes one or more individuals, governments, governmental agencies, political subdivisions,...), and incontrovertibly and irrefutably, it was in the same substantive sense in which 42 U.S.C. § 1983 (1983), invariably used the term 'person' in 1971 ('Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state...').

Even if one puts aside the fact that the defendants under Tennessee Supreme Court Rule 7, Article 4, Section 2, write for all bar candidates in Tennessee a twofold bar examination that supersedes all law school examinations written by law school professors and taken by all law school graduates who sit as bar candidates for 'employment opportunities' and 'employment' as attorneys-at-law by the government of the State of Tennessee and other employers, and then assumes that in the absence of the above stated facts the defendants are not by the very nature of the substance, function, objective and effect of their official activities an 'employment agency' for the judicial branch of the government of the State of Tennessee in fact and in law consisting of living persons who make decisions and take actions that affect other living persons, the defendants still in fact and in law are 'users' for 'employment opportunities' and 'employment' as attorneys-at-law in the State of Tennessee of a bar examination written by others to supersede all law school examinations written by law school professors and taken by all law school graduates who sit as bar candidates for 'employment opportunities' and 'employment' as attorneys-at-law by the government of the State of Tennessee and other employers.

Tennessee Supreme Court Rule 7, Article 4, Section 2, states that: '...The Board may contract with others to provide the test materials and to grade the same.' On May 13, 1987, one of the defendants, Betty W. Horn, wrote the plaintiff to, admit that the defendants used the American College Testing Service 'ACT' to handscore the multistate portion of the Tennessee bar examination and to act upon the handscored results either as passing scores or as failing scores and then report the same to the examinees. Evidently, the defendants are within the intent and meaning of Title VII 'users' of professional tests designed by others for 'employment' purposes as expressed in these words: "Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision [is a user]." § 16 (W), Uniform Guidelines on Employee

within the meaning of the statute. 42 U.S.C.A. § 2000e. *See also*

Selection Procedure (1978); 42 FR 38295 and 38312; (August 25, 1978); Equal Employment Opportunity Commission, 29 CFR Part 1607, section 16 (W) (revised July 1, 1986).

Evidently, the defendants are within the intent and meaning of the United States Constitutional and statutory laws, (e.g., Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983), and substantive due process of law under the due process clause of the Fourteenth Amendment of the United States Constitution) not only as the writers of the test for 'employment opportunities' and 'employment' as attorneys-at-law, but also as the 'users' of a test for 'employment opportunities' and 'employment' as, attorneyst-at-law by the government of the State of Tennessee and other employers.

By way of factual illustration, in January, 1987, the plaintiff in consideration of taking and passing the February, 1987, Tennessee bar examination applied to the government of the State of Tennessee for a position as a staff attorney-at-law. The plaintiff was invited for an interview during which the single most important question the interviewer asked the plaintiff was: "Have you taken and passed the Tennessee bar examination?" The plaintiff explained to the interviewer that the plaintiff intended to take and pass the February, 1987, Tennessee bar examination. The interviewer made it abundantly clear that even if the position of staff attorney were offered to the plaintiff, the plaintiff could not accept and perform the duties of the position before the state law examiners had through their reported test scores not only given substantive meaning to all the legal education acquired by the plaintiff from law school but also given the plaintiff 'employment opportunities' as an attorney-at-law by the state law examiners' decision that the plaintiff had passed the Tennesse bar examination on the basis of the reported test scores. As in the present case, the defendants not only illegally withheld from the plaintiff the plaintiff's earned passing scores of nine (9) out of twelve (12) correct answers on the essay portion and 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination, but also deliberately, willfully and intentionally lied publicly in declaring that the plaintiff did not pass the February, 1987, Tennessee bar examination.

The substantive effect of the defendants' decisions against the plaintiff was to say both to the plaintiff and the government of the State of Tennessee; that the plaintiff is denied the right to 'employment opportunity' as appointed staff attorney-at-law, that, in consequence, the plaintiff cannot accept the position even if it were offered to the plaintiff and that the plaintiff cannot perform the duties of the position even if the plaintiff were in the position without being prosecuted on the initiative of the judicial branch of the government of the State of Tennessee for the violation of the state law examiners' decision against the plaintiff based on reported test scores of the February, 1987, Tennessee bar examination.

Although the plaintiff had received from the government of the State of Tennessee a letter indicating that the plaintiff's application was under serious consideration, and even thereafter for the second time, the plaintiff was invited by the government of the State of Tennessee to submit an application for the position of a staff attorney-at-law, but the defendants' illegal decisions and actions against the plaintiff prevented the plaintiff from exercising the plaintiff's right to an 'employment opportunity' as an attorney-at-law, by further pursuing either the first position as a staff attorney-at-law or the second position as a staff attorney-at-law, notwithstanding the fact that on the basis of the intrinsic value of the legal knowledge and skills, the inherent functions and objectives of the legal knowledge and skills acquired by the plaintiff from law school and approved by the faculty of the law school, symbolized by the J.D. degree, the plaintiff could perform the specific duties of the position of staff attorney-at-law.

In the implementation of the unlawful practices of racism, sexism, discrimination,

imposition, fraud, deception, vindictiveness, retaliation, arbitrariness, capriciousness, manifest unfairness and injustice through the administration of the February, 1987, Tennessee bar examination, the defendants decided upon, acted upon and used the test scores earned by the plaintiff on the February, 1987, Tennessee bar examination to deliberately, willfully, intentionally and illegally (a) fail the plaintiff solely on the basis of the plaintiff's race and sex as a black and a female natural born citizen of the United States, (b) discriminate against the plaintiff solely on the basis of the plaintiff's race and sex as a black and a female natural born citizen of the United States, (c) created 'adverse impact' for the plaintiff by denying the plaintiff an 'employment opportunity' as an attorney-at-law in the State of Tennessee solely on the basis of plaintiff's race and sex as a black and a female natural born citizen of the United States, all in violation of § 703(b) of Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983) and the Equal Employment Opportunity Commission Uniform Guidelines on Employee Selection Procedure (1978), 29 CFR Part 1607, sections 1, 10 (A), 16 (W) (revised July 1, 1986)), interpreting and implementing Title VII of the Civil Rights Act of 1964, as amended, (1972).

Having incontrovertibly established by the foregoing facts (a) that the government of Tennessee is in fact and in law an 'employer,' (b) that the judicial branch of the government of Tennessee (like the legislative branch and the executive branch of the government of Tennessee) is in fact and in law an 'employment agency,' (c) that the defendants as 'agents' of the judicial branch of the government of Tennessee are in fact and in law an 'employment agency' by the substantive nature, purpose and effects of the work they do, (d) that the defendants as 'agents' of the judicial branch of the government of Tennessee are in fact and in law 'users' of professional tests for the 'employment' of attorneys-at-law in Tennessee, (e) that just as in fact and in law the government of Tennessee as an 'employer' and the judicial branch of the government of Tennessee (like the legislative branch and the executive branch of the government of Tennessee) as an 'employment agency' are covered by and subject to federal equal employment opportunity law, so equally the defendants are 'agents' of the judicial branch of the government of Tennessee, as 'employment agency' by the substantive nature, purpose and effects of the work they do, and as 'users' of professional 'employment' tests are covered by and subject to federal equal employment opportunity law, [and (f) that [i]n using the plaintiff's name, race, sex and examination number not only to adversely alter the plaintiff's high-scoring passing scores of nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination, but also to vindictively retaliate against the plaintiff by deliberately, willfully, intentionally and adversely withholding, covering-up, concealing and hiding the plaintiff's high-scoring passing scores of 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination] the plaintiff cites for the enforcement by the Court against the defendants for the violation of the plaintiff's rights to (a) plaintiff's meritoriously earned passing scores of nine (9) out of twelve (12) correct answers on the essay portion and 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination, (b) 'employment opportunity' as an attorney-at-law in the State of Tennessee without adverse impact, and (c) 'liberty' to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee through the defendants' unlawful practices of racism, sexism, discrimination, imposition, fraud, deception, vindictiveness, retaliation, arbitrariness, capriciousness, manifest unfairness and injustice in the administration of the February, 1987, Tennessee bar examination under the authorization and protection of Tennessee Supreme Court Rule 7, Article 13, Section 2(a), and Tennessee Supreme Court Rule 7, Article 14, Section 4, the

following federal equal employment opportunity law...and case laws of the United States:

A. United States Statutory Law Citations

1. "It shall be an unlawful employment practice for an employment agency...to discriminate against any individual because of his [of her] race, color,...sex...or to classify...for employment any individual on the basis of his [or her] race, color,...sex." § 703(b), Title VII of the Civil Rights Act of 1964, as amended (1972), 42 U.S.C. § 2000e, et. seq., (1983).

2. "It shall be an unlawful employment practice for an...employment agency ...to discriminate against any individual,...because he [or she] has made a charge [against the employment agency]..." § 704(a), Title VII of the Civil Rights Act of 1964, as amended, (1972), 42 U.S.C. § 2000e, et. seq., (1983).

3. "The term 'employment agency' means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person." Id., § 701(c).

4. "The term 'person' includes one or more individuals, governments, governmental agencies, political subdivisions,..." Id. at § 701(a).

5. "Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law, which uses a selection procedure as a basis for any employment decision [is a user]." § 16 (W), Uniform Guidelines on Employee Selection Procedure (1978); 43 FR 38295 and 38312 (August 25, 1978); Equal Employment Opportunity Commission, 29 CFR Part 1607, section 16 (W) (revised July 1, 1986).

6. "The fundamental principle underlying the guidelines is that employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal under title VII and the Executive order unless justified by business necessity." II. Adverse Impact, Uniform Guidelines on Employee Selection Procedure (1978); 43 FR 38295 and 38312, (August 25, 1978).

7. "One problem that confronted the Congress which adopted the Civil Rights Act of 1964 involved 'the effect of written preemployment tests on equal employment opportunity.' The use of these test scores frequently denied employment to minorities in many cases without evidence that the tests were related to success on the job. Yet employers [employment agencies and users] wished to use such tests as practical tools to assist in the selection of qualified employees. Thus, in Title VII, Congress authorized the use of ' any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate.'" Supplementary Information: I. Background, Uniform Guidelines on Employee Selection Procedure (1978); 42 FR 38295 or 38312, (August 25, 1978).

8. "An employment agency, including private employment agencies and State employment agencies which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization or other user of its reponsibilities under Federal law to provide equal employment opportunity or its obligation as a user under these guidelines," § 10, Uniform Guidelines on Employee Selection Procedure (1978); 42 FR 38295 and 38312, (August 25, 1978); Equal Employment Opportunity Commission, 29 CFR Part 1607, section 10 (A)(revised July 1, 1986).

IV. Recommendations

For the reasons stated previously, the magistrate recommends that the district court grant defendants' motion to dismiss for lack of subject matter jurisdiction. Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has ten (10) days from receipt of this report and recommendation in which to file any written objections to this recommendation, with the district court. Any party opposing said objections shall have ten (10) days from receipt of any objections filed to this report in which to file any responses to said objections. Failure to file specific objections within ten (10) days of receipt of this report and recommendation can constitute a waiver of further appeal of this recommendation. Thomas v. Arn, 474 U.S. 140, 88 L.Ed.2d 435, 106 S.Ct. 466 (1985).

Entered this the 30th day of September, 1988.

William J. Haynes, Jr.
United States Magistrate

B. United States Case Law Citation

9. "The EEOC guidelines for employment testing [interpreting and implementing Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C.A. § 2000e] ...are at least persuasive as to the criteria to be applied to the...bar examination...the examination...is for all practical purposes an employment test. The applicant who fails it may not, in any respect, be employed to practice law within the state." *see* Tyler v. Vickery, 517 F.2d 1089, 1107, fn. 9 at 1107 (5th Cir. 1975)(Circuit Judge Adams in his dissenting opinion).

Therefore, the introduction of mere empty words by the magistrate with regard to the application of Title VII to the plaintiff's case proved that the magistrate failed to consider and disprove by legal argument the factual and legal points made by the plaintiff in the above quoted legal and factual argument advanced by the plaintiff in the plaintiff's memorandum of law for the Court. The plaintiff maintains that Title VII applies in the plaintiff's case. The magistrate substituted the context of the term "agent" as contained in the facts of the plaintiff's case relative to Title VII of the Civil Rights Act of 1964, as amended, (1973), 42 U.S.C. § 2000e, et. seq., (1983), with the context of the term "employer" and the context of the term "labor organization" to make it seem as though the plaintiff regarded the defendants as either an "employer" or a "labor organization." The plaintiff objects to this type of substitution.

Level 1-Group 1-1 of 1 Case

Linda A. Hampton and Rose O. Howard, Plaintiffs-Appellants, v. Tennessee Board of Law Examiners, Jointly and Severally: Katherine Darden, Wheeler Rosenbalm; Charles Burson, Valerius Sanford; Lewis Hagood; Joseph Tipton; Michael Whitaker; Rodney V. Ahles; Scott McGinness; Prince Chambliss; Ellen Vergos, and Other Unknown Examiners; Cecil C. Humphreys School of Law: Francis Sullivan; Daniel Wanat; Robert Banks; and Nancy Barron, Defendants-Appellees.

No. 86-6057

United States Court of Appeals for the Sixth Circuit

819 F.2d 289: 1987 U.S. App. LEXIS 6658

May 22, 1987, Filed

Opinion:

Order:

Before: Keith and Norris, Circuit Judges; and Peck, Senior Circuit Judge.

This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the record and the parties' briefs this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Plaintiffs filed this civil action for declaratory, injunctive and monetary relief pursuant to 42 U.S.C. §§ 1983 and 1985 alleging constitutional violations in regard to their applications for admission to the state bar of Tennessee. The district court granted defendants' motion to dismiss. This appeal followed.

Plaintiffs have not alleged that a particular law or rule is unconstitutional but rather attack the manner in which the state

rules were applied to their particular bar applications.[a] For this their remedy, if any, 819 F.2d 289; 1987 U.S. App. LEXIS 6658 must be through the Tennesee courts and then by direct appeal to the United States Supreme Court. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Doe v. Pringle, 550 F.2d 596, 597 (10th Cir. 1976), *cert. denied*, 43 U.S. 916 (1977); Ginger v. Circuit Court for County of Wayne, 372 F.2d 621 (6th Cir.), *cert. denied*, 387 U.S. 935 (1967). Plaintiffs cannot invoke the jurisdiction of the federal courts merely by couching their claim for relief in terms of 42 U.S.C. § 1983 when they are actually seeking relief for their denial of admission to the bar.

Accordingly, it is ordered that the judgment of the district court is affirmed. Rule 9(b)(5). Rules of the sixth circuit.

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[a]From the facts of this case stated in the next several pages, the plaintiffs in the Hampton case submitted applications to take the Tennessee bar examination containing no deficiencies that could be used by the defendants as state public officials acting under color of state law, in this case, Tennessee Supreme Court Rule 7, to deny the plaintiffs admission to the Tennessee bar. Clearly, there was no issue in the Hampton case in which the defendants acting as state public officials could apply state rules, in this case Tennessee Supreme Court Rule 7, to any deficiencies in the applications of the two licensing candidates. The facts clearly state that the plaintiffs sought a "hearing to ascertain the standards on which the exam was graded." Where the defendants acting as state public officials entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidate(s) based on the test papers and the test answers of the licensing candidate(s), through the commission of nonfeasance, not reporting the actual passing test scores meritoriously earned by the licensing candidate(s), misfeasance and/or malfeasance, reporting adverse test scores to be relied on by the licensing candidate(s), in making any type of false test score report abuses the public trust of their public office(s): (1) to publish licensing rules that cause licensing candidate(s) to rely on a "passing test score criteria" and then (2) to wrongfully defraud the licensing candidate(s) of the meritoriously earned "passing test scores" earned by the licensing candidates by using, instead of the meritoriously earned passing test scores earned by the licensing candidate(s), an unpublished discriminatory criteria based on race, sex, creed, religious beliefs, political affiliation, national origin, ethnic origin, or any other subjective, discriminatory unpublished criteria under color of state law, which not only fraudulently denies the licensing candidate(s) the license based on the passing test scores, but also denies the licensing candidate(s) an equal employment opportunity in the profession being licensed, the licensing candidate(s) upon making a timely charge, has the right to a fair and impartial hearing to ascertain the truth as to the passing test scores meritoriously earned by the licensing candidate(s) on the professional examination. The rationale is to ensure against official misconduct by state public official(s) publicly entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidates.

In the United States District Court
For the Western District of Tennessee
Western Division

Linda A. Hampton and Rose O. Howard, Plaintiffs, vs. Tennessee Board of Law Examiners, et al., Defendants.	Filed September 23, 1986 No. 86-2476 G.B.

Order of Dismissal

Plaintiffs allege violations of their due process and equal protection rights by defendants for plaintiffs' nonadmission to the Tennessee bar. They seek relief under 42 U.S.C. §§ 1983 and 1985. Plaintiffs contend that they were denied admission to the bar because of, or in furtherance of, a conspiracy or conspiracies to admit bar applicants under an unspecified quota system.

Plaintiffs took the July 1985 bar examination and failed the essay portion. Plaintiffs petitioned the defendant board of law examiners, seeking a hearing to ascertain the standards on which the exam was graded. The board denied plaintiffs' petition; however, plaintiffs were allegedly told informally that no standards were used but that the examination was of a competitive nature. This competition is what plaintiffs assert is a quota system. Plaintiffs petitioned the Tennessee Supreme Court for review of the board's procedures and policies. This petition was pending when plaintiffs took the February 1986 bar exam. Plaintiffs allege that during this second examination defendants intentionally memorized plaintiff's examination number and

intentionally failed plaintiffs. They further contend that the identification procedures for the examination were such that anonymity was lacking and that personal bias influenced whether a particular applicant failed or passed the examination. Plaintiffs claim that these actions on the part of the defendants deprived them of their due process and equal protection rights, violated Section 8 of the Tennessee Constitution and Tennessee Supreme Court Rule 7 and constituted fraudulent misrepresentation, defamation, outrageous conduct and intentional infliction of emotional distress.

Defendants move to dismiss the action for lack of subject matter jurisdiction under Fed. R. Civ. P. 12. Defendants contend that the federal courts have no jurisdiction to entertain a cause of action based on nonadmission to the state bar, unless plaintiff attacks the specific rules established by the state. For the following reasons, the court agrees and defendants' motion is granted.

Courts have recognized that there is a fundamental difference between a claim that a state has unlawfully denied a particular applicant or applicants admission to the bar, and a claim that the rules and regulations generally governing admission to its bar are unconstitutional. Delgado v. McTighe, 442 F.Supp. 725 (E.D. Pa. 1977). Federal courts have jurisdiction only where the constitutional validity of those rules is questioned, and not where the application of the rules to a specific person or persons is challenged. Ktsanes v. Underwood, 552 F.2d 740 (7th Cir. 1977). Federal courts do have jurisdiction over constitutional claims attacking states' power to license attorneys or their rule-making authority or administration of the rules. Doe v. Pringle, 550 F.2d 596 (10th Cir. 1976). Plaintiffs, however, are attacking the application of the state rules to themselves, and are not attacking the constitutionality of the rules in general. For this reason, they fall into the category of cases where the proper avenue for complaints would be to petition the

board of law examiners with a grievance, then appeal the board's decision to the Tennessee Supreme Court and then seek review of the Tennessee Supreme Court decision by petition for certiorari in the United States Supreme Court. *see* District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Ktsanes, 552 F.2d 740; Pringle, 550 F.2d 596; Feldman v. Board of Law Examiners, 438 F.2d 699 (8th Cir. 1971); Arvelo v. Supreme Court of Puerto Rico, 382 F.Supp. 510 (D.P.R. 1974). "Orders of a state court relating to the admission, discipline and disbarment of members of its bar, may be reviewed only by the Supreme Court of the United States on certiorari to the state court and not by means of an original action in a lower federal court." MacKay v. Nesbett, 412 F.2d 846 (9th Cir. 1969). The rule of review by the state courts and ultimately the United States Supreme Court applies even when a disgruntled bar applicant couches his federal court complaint in terms of a civil rights claim under 42 U.S.C. § 1983 rather than a request to review and reverse the state bar examiners' action. Pringle, 550 F.2d at 599; Feldman v. State Bd. of Law Examiners, 438 F.2d 699 (8th Cir. 1971).

Plaintiffs argue that, because they have already requested review of the board decision in the Tennessee Supreme Court and were denied review, they are without any avenue of appeal if they are not allowed to sue in federal district court. This argument is without merit.

Plaintiffs' complaint indicates that plaintiffs never raised their claims of unconstitutional application of the state procedures before the board or before the Tennessee Supreme Court. Instead, plaintiffs' sole petition to the board and to the state supreme court requested simply a clarification of procedures used in grading. *see* Plaintiffs' Complaint ¶ 7-9. This petition was filed after their first exam. After board action on the request, the Tennessee Supreme Court denied certiorari. Plaintiffs did not seek review in the United States Supreme Court. No petition

was filed before the board or any other state forum regarding the second exam, during which the unconstitutional actions allegedly occurred. Thus, the assertions about unconstitutional application of procedures have never been raised in any state forum.

Plaintiffs' contention that there is no state forum in which their claims can be heard is apparently based in part on Tennessee Supreme Court Rule 7. That rule states in part: "Any person aggrieved by any action of the board may petition this court for a review thereof, as under the common law writ of certiorari." Tennessee Supreme Court Rule 7 § 14.01. The rule further provides that "[t]he only remedy afforded for a grievance for failure to pass the bar examination shall be the right to reexamination as herein provided." Tennessee Supreme Court Rule 7 § 14.04. Plaintiffs indicate that the board denied their original petition because it solely challenged their failure of the examination. If their current grievance is also classified as "a grievance for failure to pass the bar exam," over which review is prohibited under Rule 7, then they could not obtain the relief sought here in a state forum. Whether the board and the Tennessee Supreme Court would so categorize this complaint is uncertain, and a decision about whether review is barred depends on an interpretation of Rule 7. The proper interpretation of the rule, however, is one that should be decided by the Tennessee courts and not by this court.

Plaintiffs further contend that their claim cannot be heard in state court because the Tennessee courts will not hear § 1983 actions. They cite Chamberlain v. Brown, 223 Tenn. 25, 442 S.W.2d 248 (1969), in support of this proposition. On June 30, 1986, the Tennessee Supreme Court overruled Chamberlain in Poling v. Goins, Supreme Court No. 227. In that case, the Supreme Court held that federal courts do not have exclusive jurisdiction over § 1983 claims, and that Tennessee courts will hear those claims. This ruling defeats plaintiffs' claim that they

will be left without a forum to hear the case.

Plaintiffs also contend that this court has subject matter jurisdiction because their complaint, in the alternative, alleges that Rule 7 is unconstitutional. However, liberally reading the complaint, this court does not find it to be a challenge to the constitutionality of the Rule. Rather, the allegation is that the Rule is unconstitutional as applied to plaintiffs. In this regard, this allegation is no different than the other allegations in the complaint, as far as jurisdiction is concerned.

In addition to their federal claims, plaintiffs allege several pendent state claims including fraudulent misrepresentation, defamation, and intentional infliction of emotional distress. However, once the federal claims are dismissed, the federal district court has broad discretion whether or not to dismiss the pendent claims. See Moore v. County of Alameda, 411 U.S. 92 (1972), *reh. denied*, 412 U.S. 963, overruled on other grounds, Monnel v. Dept. of Social Services, 436 U.S. 658 (1978). In this case the court sees no reason to exercise jurisdiction over the state claims.

The entire case is dismissed.

It is so ordered.

Julia Smith Gibbons
United States District Judge

September 23, 1986

D. District Court Order of January 9, 1989

United States District Court
Middle District of Tennessee
Nashville Division

Carmen R. Stanfield,	
v.	No. 3-88-0168 Judge Higgins
Betty W. Horn, et al.	

Order

For the reasons set forth in the memorandum contemporaneously filed, the plaintiff's objections (filed December 1, 1988) to the magistrate's report and recommendation (filed September 30, 1988) are overruled.[a] The magistrate's report is adopted and approved. Accordingly, the defendants' motion to dismiss (filed March 17, 1988) is granted and the plaintiff's complaint is dismissed.

It is so ordered.

Thomas A. Higgins
United States District Judge
1-9-89

[a]As stated in the plaintiff's pleadings of December 1, 1988, the proper course of conduct for the federal district court judge, in this case, who received a timely objection from the plaintiff as to the magistrate's dishonest, fraudulent and deceitful conduct that unconscionably prejudiced. and continues to prejudice, the administration of justice in the plaintiff's case wherein the magistrate deliberately, willfully, intentionally and wrongfully changed the verb "do" into the new verb "do not" in a well-settled federal rule of law in the Feldman case not only to change the rule of law itself, but also to change the outcome of the application of the rule of law and the status of the rights of the party who would otherwise prevail without the magistrate's change of the words in the well-settled federal rule of law, is not to "adopt and approve" the magistrate's report, but rather to conduct a disciplinary investigation to determine whether this seemingly isolated violation indicates a frequent and unlawful pattern of misconduct on the part of the magistrate.

United States District Court
Middle District of Tennessee
Nashville Division

Carmen R. Stanfield,

v.

Betty W. Horn, et al.

No. 3-88-0168
Judge Higgins

Memorandum

On February 25, 1988, the plaintiff, Carmen R. Stanfield, a black female, filed this action against the defendants, Betty W. Horn, administrator of the board of law examiners of Tennessee; Charles W. Burson, president of the board of law examiners of Tennessee; Lowry F. Kline, vice-president of the board of law examiners of Tennessee; and H. Lee Barfield, II, secretary of the board of law examiners of Tennessee, alleging that the defendants violated the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq., in their denial of her application for licensure to practice law, in violation of 42 U.S.C. § 1983.[b] Stanfield challenges the

[b]As stated in the plaintiff's pleadings of December 1, 1988, in the above quoted passage, the phrase "in their *denial of her application* for licensure to practice law," exemplifies the concept of substitution by taking the vague and ambiguous meaning of the term "application" from the facts of the Feldman case, a case in which the bar applicant, Feldman, filed a defective application, and reading the defective application concept into the facts of the plaintiff's case and in so doing, substituting a set of significant and essential facts in the plaintiff's case with the vague and ambiguous meaning of the term "application" in the facts of the Feldman case. The defect in Feldman's application was that he had not graduated from an American Bar Association (ABA) approved law school. It requires substantive facts and substantive rights to earn the privilege to practice law. The application which the plaintiff submitted to the defendants was approved by the defendants as indicated by the defendants' own words in the defendants' letter dated February 5, 1987: "We...advise that [based on your application] you have been approved to take the Tennessee bar

supreme court rule which provides that the sole remedy afforded an unsuccessful applicant on the bar examination is the right to reexamination. Stanfield also challenges the board's policy not to discuss or review with an applicant the responses and results of such applicant's examination. Accordingly, Stanfield seeks a declaratory judgment that Tennessee Supreme Court Rule 7, Article 13, Section 2 and Article 14, Section 4, which establish these policies are unconstitutional. In addition, Stanfield alleges that she provided nine (9) out of twelve (12) correct answers on the essay portion of the examination and 175 out of 200 correct answers on the multistate portion of the examination and seeks an order directing "the recovery of the plaintiff's test scores of nine (9) out of twelve (12) correct answers on the essay portion and 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination" and "the certification and license of the plaintiff as an attorney-at-law in the State of Tennessee [board on the plaintiff's passing test scores

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examination to be given on February 25 and 26, 1987." Evidently, the plaintiff's application was not an issue in this case, but rather the defendants withholding from the plaintiff: (a) the right to equal protection of the law as required by the equal protection clause of the Fourteenth Amendment of the United States Constitution, (b) the right to procedural due process of law as required by the due process clause of the Fourteenth Amendment of the United States Constitution, (c) the passing test scores of nine (9) out of twelve (12) correct answers earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, (d) the passing test scores of 175 out of 200 correct answers earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, (e) the certification for a license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (f) the license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (g) the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee, (h) personal property right in the plaintiff's 24 8 1/2" x 14" legal size pages of paper on which the plaintiff's legal essay was written, (i) the intellectual and literary property right in the legal essay written by the plaintiff on the plaintiff's 24 8 1/2" x 14" legal size pages of paper, (j) the financial property right in the plaintiff's $25, (k)"equal employment opportunity" as an attorney-at-law in the State of Tennessee without discrimination based on race and sex, (l) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without retaliation through the administration of the test scores of the

on the February, 1987, Tennessee bar examination."][c] Stanfield seeks damages against the defendants in the amount of $20,000,025.00, including $10,000,025.00 in compensatory damages and $10,000,000.00 in punitive damages. Stanfield also seeks attorney's fees and costs.

On March 12, 1987, the defendants filed a motion to dismiss on the grounds that the court lacked subject matter jurisdiction over the plaintiff's claims and that the plaintiff failed to state a claim for which relief could be granted.

By an order entered March 30, 1988, the defendants' motion to dismiss was referred to the magistrate pursuant to 28 U.S.C. § 636(b)(1)(B).[d] On September 30, 1988, the magistrate filed his report and recommendation (report). The magistrate recommended that the defendants' motion to dismiss be granted and that the plaintiff's complaint be dismissed for lack of subject matter jurisdiction.

February, 1987, Tennessee bar examination, and (m) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without adverse impact through the administration of the test scores of the February, 1987, Tennessee bar examination.

[c]The plaintiff never made such a statement in all the pleadings submitted by the plaintiff in this case.

[d]As stated in the plaintiff's pleadings of April 4, 1989, neither the magistrate nor the district court judge had legal authority under the provisions of 28 U.S.C. § 636(b)(1)(B) to act upon defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. The provisions of 28 U.S.C. § 636(b)(1)(B) state that: "a judge may designate a magistrate to conduct hearings, including evidentiary hearings, and submit to a judge of the court proposed findings of fact and recommendations for disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for **posttrial** relief made by individuals convicted of criminal offenses..."

First, distinctively, the present case by nature is a civil case, as differentiated from and opposed to a criminal case. Second, distinctively, the present case is at the "pretrial" stage, as differentiated from and opposed to the trial stage, not to mention the "posttrial" stage. Third, distinctively, the defendants's pretrial motion of failure to state a claim upon which relief can be granted was filed to dismiss the plaintiff's case at the "pretrial" stage, as differentiated from and opposed to the trial stage, not to mention the "posttrial" stage. Fourth, distinctively, the defendants' pretrial motion concerns "failure to state a claim upon which relief can be granted," clearly excepted under the provisions of 28 U.S.C. § 636(b)(1)(A), which state that: "a judge may designate a magistrate to hear and determine any pretrial matter pending before the court **except** a motion...to dismiss for failure to state a claim upon which

On October 17, 1988, the plaintiff filed objections to the magistrate's report. In an order entered November 18, 1988, the court found that the plaintiff's objections contained scandalous accusations against the magistrate and struck the plaintiff's objections.[c] On December 1, 1988, the plaintiff refiled her

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relief can be granted." Fifth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' motion, the district court judge lacked the authority to assign the defendants' "pretrial" motion to a magistrate. Sixth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' pretrial motion, the magistrate lacked authority to accept, to hear, and to make any recommendation whatsoever concerning the defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. Therefore, the magistrate's recommendation and the district court judge's ruling and order resting wholly on the contents of the magistrate's report and recommendation of September 30, 1988, "adopted and approved" by the district court judge, are without legal effect upon the district court's subject-matter jurisdiction over the plaintiff's case.

[c]As stated in the plaintiff's pleadings of December 1, 1988, the first and foremost test of a "slanderous" statement or a "libelous" statement is to prove that the statement is denotatively and substantively untrue. In every instance of the plaintiff's use of denotative meanings of terms in the English language, the plaintiff first quoted words, or phrases, or clauses, or sentences, or paragraphs from the magistrate's ten-page "report and recommendation" of September 30, 1988, and comparatively, the plaintiff quoted, words, or phrases, or clauses, or sentences, or paragraphs from the record of the plaintiff's case. In no instance of the comparative quotations and explanations of the factual and legal differences between the passages from the magistrate's ten-page "report and recommendation" and the passages from the record of the plaintiff's case shown by the plaintiff using the denotative meanings of the terms in the English language has the court's "order and memorandum" shown that the words, or phrases, or clauses, or sentences, or paragraphs quoted by the plaintiff from the magistrate's "report and recommendation" were not the exact wordings of the magistrate or were untrue and hence meet the first and foremost test of a "slanderous" or "libelous" statement within the meaning of Federal Rule of Civil Procedure 12(f).

For cause, to strike out specific words, or phrases, or clauses, or sentences from a pleading is not the same as to strike a pleading without a cause. In the court's "order and memorandum" of November 18, 1988, it is admitted that there existed no judicially decided case on the basis of which to strike the plaintiff's objections to the magistrate's ten-page "report and recommendation" of September 30, 1988. Moreover, in the court's "order and memorandum" of November 18, 1988, it is admitted that the plaintiff's objections to the magistrate's ten-page "report and recommendation" of September 30, 1988, are not the same as a complaint setting forth a new cause. Still, while in the court's "order and memorandum" of November 18, 1988, it is admitted that a complaint containing passages based on "scandalous matter," as distinguished from and opposed to statements of irrefutable and incontrovertible fact, is subject to a judicial order to strike out the statements based on "scandalous matter," there is no material evidence in the court's "order and memorandum" of November 18, 1988, to prove that the plaintiff committed "slander" or "libel" or used "improper" statements calculated to cast a derogatory light on the magistrate by quoting directly

objections after deleting the accusations against the magistrate.[1] On December 15, 1988, the defendants filed a response to the plaintiff's objections.

The court has reviewed the magistrate's report de novo as required by 28 U.S.C. § 636(b)(1)(C). For the reasons set forth

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and exactly the magistrate's own words contained in the magistrate's own ten-page "report and recommendation" of September 30, 1988. Where it can be said that statements made in the magistrate's ten-page "report and recommendation" of September 30, 1988, and directly and exactly quoted by the plaintiff from the magistrate's own "report and recommendation" are either "slanderous" or "libelous," then, it was, not the plaintiff, or the plaintiff's direct and exact quotations, but rather the magistrate and the magistrate's statements that originally caused the "slander" or "libel" for the magistrate, if at all such is the case.

This truism is further explained by the fact that if there were any "slander" or "libel" against the magistrate, the "slander" and "libel" were caused by the magistrate himself, among other deeds, by changing the verb "do" into the verb "do not" in a well-settled federal rule of law which appeared in the magistrate's ten-page "report and recommendation" filed on September 30, 1988, in the United States District Court for the Middle District of Tennessee, Nashville Division, to become part of the public record open to the public for inspection. In continued to be in the public domain for seven (7) days before the plaintiff received a copy plus ten (10) more days before the plaintiff's objections to the magistrate's ten-page "report and recommendation" of September 30, 1988, were filed in the United States District Court for the Middle District of Tennessee, Nashville Division.

"Integrity" as a quality of a person is an abstraction. If it is to mean anything among human beings living in this world of factual experience, then, it must find measurable expression in the substantive result of a person's objective deeds. Factually and legally, the "integrity" of a person is as good as the quality of the person's objective deeds. Again, factually and legally, the "integrity" of a person is as bad as the quality of the person's objective deeds. The ten-page "report and recommendation" under reference is the substantive result of the objective deeds of the magistrate who is primarily and fully responsible for its contents which objectively attest to the "integrity" of the magistrate. Where, for instance, the magistrate acting as a United States magistrate in the first instance without any authority from the Justices of the United States Supreme Court changed the United States Supreme Court's rule of law by changing the verb "do" into the verb "do not" in the magistrate's ten page "report and recommendation" and where in the second instance, the plaintiff in using the denotative meanings of terms in the English language to point out this irrefutable and incontrovertible fact, the magistrate's "integrity" in causing the irrefutable and incontrovertible fact is no more different than the irrefutable and incontrovertible fact that the magistrate himself created to objectively attest to his own "integrity." Clearly, the court's statement on page 2 of the court's "order and memorandum" of November 18, 1988, that "...the plaintiff continues throughout her objections to cast aspersions on the integrity of the magistrate," is another indication of the court's unwillingness to see as a matter of factual causation that it was, not the plaintiff, but rather the magistrate who "cast aspersions on the integrity of the magistrate," by the results of his own objective deeds.

[1]However, on the same date, the plaintiff filed "objections to the court's 'order and memorandum' of November 18, 1988." In her objections to the court's order, the plaintiff reasserts those arguments and accusations against the magistrate which the

below, the plaintiff's objections to the magistrate's report are overruled. The magistrate's report is adopted and the plaintiff's complaint is dismissed.[n]

I.

In considering a motion to dismiss, the court must accept as true all factual allegations in the complaint. Accordingly, the facts have been set forth as alleged in the plaintiff's complaint.

On February 25, 1987, Stanfield arrived at Tennessee State University to take the two-day Tennessee bar examination. On the first day, the multistate portion of the examination was administered, and on the second day the essay portion of the examination was administered. Stanfield alleges that on the first day of the examination, February 25, 1987, she was the first person in a line containing approximately ten (10) persons of the 229 people who took the February 1987 bar examination. Stanfield further alleges that a board employee, who had a list of the February 1987 applicants, demanded that Stanfield produce identification with her photograph, name, race and sex. According to Stanfield, this board employee:

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court found to be scandalous in its order of November 18, 1988. In the court's opinion, Stanfield's action in filing her "objections" to this court's order clearly borders on contempt. [The plaintiff's reporting of professional misconduct, on the part of the magistrate, which extremely prejudiced the administration of justice in the plaintiff's case in no way borders on contempt.]

[n]As stated in the plaintiff's pleadings of December 1, 1988, the proper course of conduct for the federal district court judge, in this case, who received a timely objection from the plaintiff as to the magistrate's dishonest, fraudulent and deceitful conduct that unconscionably prejudiced, and continues to prejudice, the administration of justice in the plaintiff's case wherein the magistrate deliberately, willfully, intentionally and wrongfully changed the verb "do" to the new verb "do not" in a well-settled federal rule of law in the Feldman case not only to change the rule of law itself, but also to change the outcome of the application of the rule of law and the status of the rights of the party who would otherwise prevail without the magistrate's change of the words in the well-settled federal rule of law, is not to "adopt and approve" the magistrate's report, but rather to conduct a disciplinary investigation to determine whether this seemingly isolated violation indicates is a frequent and unlawful pattern of misconduct on the part of the magistrate.

...carefully observed the plaintiff's name as Carmen R. Stanfield on the plaintiff's identification card, (c) carefully observed the plaintiff's face, color and sex on the plaintiff's identification card as a black and a female, (d) carefully compared the plaintiff's photo showing the plaintiff's race and sex as a black and a female with the plaintiff's physical appearance as a black and a female, (e) carefully noted the exactness between the plaintiff's photo showing the plaintiff's race and sex as a black and a female, (f) carefully compared the plaintiff's name on the plaintiff's identification card showing Carmen R. Stanfield with the plaintiff's name on the roster of Tennessee bar candidates showing Carmen R. Stanfield located among the names bearing the "S" series towards the end of the page (g) deliberately, willfully and intentionally decided and acted in a nervous, trembling and covering-up manner to mark, and did mark, some identification near the plaintiff's name noting the race and sex of the plaintiff which gave the plaintiff not only reason to wonder at the nervous, trembling and weird behavior of the defendants in nervously covering-up and writing the identification mark which the defendants wrote near the plaintiff's name, but also reason to suspect that the defendants had some adverse ulterior motive against the plaintiff....[g]

[g]In the present case, the defendants acting as state public officials, as evidenced by the above description, makes use of the examination site: (1) to publicly take exclusive physical possession and control of the objective and substantive material evidence, the test papers and the test answers of the licensing candidate, substantiat-

By a letter dated April 11, 1987, the board of law examiners notified Stanfield that she was not successful on the February 25th and 26th bar examination.[h] She was further informed that she would "be notified in writing of [her] essay grades by question and multistate scores by subject." The letter also informed Stanfield that "there is no provision... for review of examination papers by the applicant." Finally, Stanfield was advised of the date of the next bar examination. A notice of intent to retake the examination was included. By a memorandum dated April 11, 1987, Stanfield was informed that "upon written request addressed to the administrator, the board will furnish any unsuccessful applicant a photocopy of each of such applicant's essay examination which did not receive a passing grade."[i] Stanfield was further informed that it was the practice

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ing the passing test scores meritoriously earned by the licensing candidate, (2) to secretly gather unpublished discriminatory criteria on licensing candidates as regards the licensing candidate's race, sex, ethnic origin, etc., for later use in making, in this case, false test score reports, and (3) to verify the licensing candidate's name and examination number to be matched with the licensing candidate's examination papers for use in adversely deciding and acting upon the test papers and test scores of the licensing candidate later in the test score reporting process.

[h]Actual injury results on the reporting date when state public officials, entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the licensing candidate based on the test papers and the test answers of the licensing candidate, through the commission of nonfeasance, not reporting the actual passing test scores meritoriously earned by the licensing candidate, misfeasance and/or malfeasance, reporting adverse test scores to be relied on by the licensing candidate, in making any type of false test score report abuses the public trust of their public office(s): (1) to publish licensing rules that cause licensing candidates to rely on a "passing test score criteria" and then (2) to wrongfully defraud the licensing candidate of the meritoriously earned "passing test scores" earned by the licensing candidate by using, instead of the meritoriously earned passing test scores earned by the licensing candidate, an unpublished discriminatory criteria based on race, sex, creed, religious beliefs, political affiliation, national origin, ethnic origin, or any other subjective, discriminatory unpublished criteria under color of state law, which not only fraudulently denies the licensing candidate the license based on the passing test scores, but also denies the licensing candidate an equal employment opportunity in the profession being licensed.

[i]As stated in plaintiff's pleadings of October 17, 1988, in his highly questionable desire to dismiss the plaintiff's case, the magistrate, and now the district court judge, in this statement suggested a willingness to act on the part of the defendants who made an offer to send the plaintiff copies of the plaintiff's examination papers. The fact

of the board not to discuss or review with any applicant the result of any applicant's examination or the responses of an applicant to any essay question.

On April 14, 1987, Stanfield wrote to the board of law examiners and requested the board to produce documentary evidence that she had failed the bar examination. Stanfield also tendered a check for $25.00 with a signed notice of intent to retake the bar examination.[j]

On April 17, 1987, Stanfield filed a complaint with the board, alleging that the defendants violated her civil rights.[k]

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however is that the magistrate, and now the district court judge, completely and totally ignored or refused to read, understand and know the records of the case before the magistrate, and now the district court judge, wherein the plaintiff in writing several times requested the defendants to send to the plaintiff documentary proof including the plaintiff's essay examination papers, but the defendants repeatedly refused to honor the very words of the quotation the magistrate, and now the district court judge, cited above which is, in part, the very reason that the plaintiff filed this case in federal district court. Why then would the magistrate, and now the district court judge, want to use such a quotation to dismiss the plaintiff's case?

[j]As stated in the plaintiff's pleadings of December 1, 1988, the check the plaintif f "tendered for $25.00 with a signed notice of intent to retake the examination" was very much conditional, but the original facts of the plaintiff's case were restated by the magistrate, and now the district court judge, to make them seem as though the $25 check was unconditionally given to the defendants by the plaintiff. The conditional nature of the tendered $25 was c learly stated on pages 12-13 of the plaintiff's complaint in these words: "In the expectation that the defendants who are the practitioners and the examiners of legal professional responsibility required of bar candidates in Tennessee would in the exemplification of legal professional responsibility produce documentary evidence not only for both the defendants and the plaintiff to examine the irrefutable facts explaining and substantiating the allegation of a failure on the essay portion of the February, 1987, Tennessee bar examination, but also for the plaintiff to see, understand and avoid the contested and irrefutably proven facts of the alleged failure in a subsequent bar examination, the plaintiff conditionally forwarded to the defendants a personal check...in the amount of $25 as fees together with a signed notice of intent form to take a second Tennessee bar examination..." and plaintiff went on to state in plaintiff's pleadings that "...Clearly to give you [the defendants] the attached $25 check you [the defendants] requested is no admission that your [the defendants'] empty words are true [concerning the defendants' allegation that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination.]".

[k]The plaintiff never filed a complaint with the board, the wrongdoer, in this case. The plaintiff mailed the defendants notice of the defendants' violations against the plaintiff.

Then, on April 23, 1987, Stanfield sent the board of law examiners notice of her intent to file a complaint with the United States Civil Rights Commission. On the same date, Stanfield filed a complaint with the United States Civil Rights Commission. The United States Civil Rights Commission forwarded Stanfield's complaint to the United States Department of Education. The Department of Education refused to investigate Stanfield's complaint.

By a letter dated April 22, 1987, the board of law examiners advised Stanfield that she passed eight (8) of the twelve (12) essay questions and 123 out of 200 questions on the multistate examination.[2]

Shortly thereafter, on April 29, 1987, Stanfield requested that the board return her $25.00 fee since the board failed to comply with her request to prove that she had not earned a passing test score on the bar examination.[1]

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[2]These scores are insufficient to pass the bar examination. [This insufficiency was caused, not by the plaintiff, but rather by the defendants acting as state public official(s), publicly entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the plaintiff, the licensing candidate in this case, based on the test papers and the test answers of the plaintiff, through the commission of nonfeasance, not reporting the actual passing test scores meritoriously earned by the plaintiff, nine and 175 on the essay and multistate portions of the February, 1987, Tennessee bar examination, respectively, misfeasance and/or malfeasance, reporting adverse test scores to be relied on by the plaintiff, in making false test score report(s) to the plaintiff abused the public trust of their public office(s): (1) to publish licensing rules that caused the plaintiff to rely on a "passing test score criteria" and then (2) to wrongfully defraud the plaintiff of the meritoriously earned "passing test scores" earned by the plaintiff by using, instead of the meritoriously earned passing test scores earned by the plaintiff, an unpublished discriminatory criteria based on race and sex, which not only fraudulently denies the plaintiff the license based on the passing test scores, but also denies the plaintiff an equal employment opportunity in the profession being licensed, in this instance, the legal profession.]

[1]As stated in the plaintiff's pleadings of December 1, 1988, the magistrate's, and now the district court judge's, statement that "...Stanfield requested that the board return her $25.00 fee since the board failed to comply with her request to prove that

II.

The plaintiff objects to the magistrate's finding that the court lacks subject matter jurisdiction over the plaintiff's action and contends that the magistrate misinterpreted[m] the law and its application to this action. The court has carefully reviewed the record and finds that the magistrate correctly interpreted the law and its application to this action.

The Supreme Court has recognized that there are two types of claims that are brought by unsuccessful bar applicants in the federal courts: "The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission." D.C. Court of Appeals v. Feldman, 460 U.S. 462, 485, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983) *(quoting* Doe v. Pringle, 550 F.2d 596, 597 (10th Cir. 1976). In Feldman, the Supreme Court held that the district courts have subject matter jurisdiction over the first type of claim--general challenges to state bar rules promulgated by state courts in nonjudicial proceedings--but do not have jurisdiction over the second type of claim--challenges

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she earned no passing test scores in the February, 1987 bar examination," is a clear understatement of the facts in this case. On the defendants' reporting date of April 11, 1987, the defendants alleged that the plaintiff earned no passing test scores on the essay portion of the February, 1987, Tennessee bar examination. As of that date, the single and only issue between the plaintiff and the defendants consisted of the essay test scores which required facts to prove whether or not they were passing test scores. The established proof, which came directly from the defendants in the defendants' letter of April 22, 1987, that they were passing test scores dictated the necessity for the plaintiff to demand a refund of the plaintiff's $25 from the defendants.

[m]This is a gross understatement of the facts in this case. The magistrate did not merely *misinterpret* the law and its application to this action. The magistrate intentionally, willfully, deliberately, wrongfully, dishonestly, deceitfully and fraudulently made a physcial change in a well-settled federal rule of law in the Feldman case by changing the verb "do" into the verb "do not" and then wrongfully applied the federal rule of law with the inserted verb "do not," not only to change the rule of law itself, but also to change the outcome of the application of the rule of law and the status of the rights of the party who would otherwise prevail without the magistrate's wrongful change of the words in the well-settled federal rule of law which adversely affected the substantive rights of the plaintiff in the present case.

to state court decisions in particular cases arising out of judicial proceedings. The Supreme Court emphasized that the district courts do not have jurisdiction over the second type of claim even if the complaint alleges that the state court's action was unconstitutional.

The courts have recognized that the distinction between claims about state bar rules and claims that a state court has unlawfully denied a particular applicant admission is often difficult to draw. Razatos v. Colorado Supreme Court, 746 F.2d 1429 (10th Cir. 1984) *cert. denied*, 471 U.S. 1016, 105 S.Ct. 2019, 85 L.Ed.2d 301 1985). Nordgren v. Hafter, 789 F.2d 334 (5th Cir. 1986). Therefore, in Feldman, *supra*, the Supreme Court noted:

> If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state court decision. This the District Court may not do.

Feldman, 460 U.S. at 383-84, n. 16, 106 S.Ct. at 1315, n. 16, 5 L.Ed.2d 206, n. 16.

Accordingly, in order to determine whether this court has subject matter jurisdiction over this action, the court must determine whether Stanfield's claims present a general constitutional challenge to the bar admission rules or are "inextricably intertwined" with the board's denial of Stanfield's application for admission to the Tennessee bar.[n]

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[n]As stated in the plaintiff's pleadings of December 1, 1988, in the above quoted passage, the phrase *"denial of [her] application,"* exemplifies the concept of substi-

The court recognizes that Stanfield challenges the constitutionality of Tennessee Supreme Court Rule 7, Article 13, Section 2(a) and Article 14, Section 4. However, in the court's view, the plaintiff's constitutional claim is inextricably intertwined with her challenge to the board's denial of her application for admission to the bar.[o]

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tution by taking the vague and ambiguous meaning of the term "application" from the facts of the Feldman case, a case in which the bar applicant, Feldman, filed a defective application, and reading the defective application concept into the facts of the plaintiff's case and in so doing, substituting a set of significant and essential facts in the plaintiff's case with the vague and ambiguous meaning of the term "application" in the facts of the Feldman case. The defect in Feldman's application was that he had not graduated from an American Bar Association (ABA) approved law school. It requires substantive facts and substantive rights to earn the privilege to practice law. The application which the plaintiff submitted to the defendants was approved by the defendants as indicated by the defendants' own words in the defendants' letter dated February 5, 1987: "We...advise that [based on your application] you have been approved to take the Tennessee bar examination to be given on February 25 and 26, 1987." Evidently, the plaintiff's application was not an issue in this case, but rather the defendants withholding from the plaintiff: (a) the right to equal protection of the law as required by the equal protection clause of the Fourteenth Amendment of the United States Constitution, (b) the right to procedural due process of law as required by the due process clause of the Fourteenth Amendment of the United States Constitution, (c) the passing test scores of nine (9) out of twelve (12) correct answers earned by the plaintiff on the essay portion of the February, 1987, Tennessee bar examination, (d) the passing test scores of 175 out of 200 correct answers earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination, (e) the certification for a license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (f) the license as an attorney-at-law in the State of Tennessee based on the passing test scores earned by the plaintiff on the essay portion and the multistate portion of the February, 1987, Tennessee bar examination, (g) the "liberty" to use the plaintiff's mental faculties as an attorney-at-law in the State of Tennessee, (h) personal property right in the plaintiff's 24 8 1/2" x 14" legal size pages of paper on which the plaintiff's legal essay was written, (i) the intellectual and literary property right in the legal essay written by the plaintiff on the plaintiff's 24 8 1/2" x 14" legal size pages of paper, (j) the financial property right in the plaintiff's $25, (k) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without discrimination based on race and sex, (l) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without retaliation through the administration of the test scores of the February, 1987, Tennessee bar examination, and (m) "equal employment opportunity" as an attorney-at-law in the State of Tennessee without adverse impact through the administration of the test scores of the February, 1987 Tennessee bar examination.

[o]As stated in the plaintiff's pleadings of December 1, 1988, there are three fallacies in this statement made by the magistrate, and now the district court judge. The first fallacy is found in the words "board's decision [or board's denial]". The magistrate, and now the district court judge, assumes that the "board" held a quasi-judicial proceeding at which the plaintiff and the defendants were present and contested the

The plaintiff's primary contention is that she satisfactorily passed the Tennessee bar. Moreover, the primary relief the plaintiff requests is that the court grant the plaintiff a judgment against the defendants "for recovery of the plaintiff's test scores of nine (9) out of twelve (12) correct answers on the essay and 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination" and that the court grant the plaintiff a judgment against the defendants "for the certification and license of the plaintiff as an attorney-at-law in the state of Tennessee based on the plaintiff's passing test scores on the February, 1987, bar examination." Clearly, therefore, the primary thrust of the plaintiff's action is the board's denial of her application for admission to the bar.

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plaintiff's case and from which contest the "board" rendered a quasi-judicial decision. But the magistrate, or the district court judge, produced no recorded and reported state case containing the proceedings in which one can find the "board's" [quasi-judicial] decision [or quasi-judicial denial]. The second fallacy is found in the words "application." The district court judge assumes that the defendants acting as state public officials found some deficiency in the plaintiff's application to take the bar examination which could be used by the defendants acting as state public officials entrusted with the exclusive physical possession and control of the objective and substantive material evidence of the passing test scores meritoriously earned by the plaintiff based on the test papers and the test answers of the plaintiff, through the commission of nonfeasance, not reporting the actual passing test scores meritoriously earned by the licensing candidate, misfeasance and/or malfeasance, reporting adverse test scores to be relied on by the licensing candidate, in making any type of false test score report does not abuse the public trust of their public office(s): (1) to publish licensing rules that cause licensing candidates to rely on a "passing test score criteria" and then (2) to wrongfully defraud the licensing candidate of the meritoriously earned "passing test scores" earned by the licensing candidate by using, instead of the meritoriously earned passing test scores earned by the licensing candidate, an unpublished discriminatory criteria based on race, sex, creed, religious beliefs, political affiliation, national origin, ethnic origin, or any other subjective, discriminatory criteria under color of state law, which not only fraudulently denies the licensing candidate the license based on the passing test scores, but also denies the licensing candidate an equal employment opportunity in the profession being licensed. But the district court judge produced no recorded and reported state case containing the proceedings in which one can find this type of test score fraud committed by state public officials to not be an abuse of the public trust of the defendants' public office(s). To accept the fallacy of a "board's decision [or board's denial]" is to accept the proposition that the defendants rendered a quasi-judicial or judicial decision in a case which has neither a plaintiff nor a defendant. The magistrate's report, and now the district court judge's memorandum, assumes that the plaintiff first took the plaintiff's case to the defendants who rendered a quasi-judicial or "board's decision [or board's

The board, in administering the bar examination, acts on behalf of and is regulated by the Tennessee Supreme Court, and the court retains full authority to determine if a person should be licensed and admitted to practice as an attorney. Tenn. Code Ann. §§ 23-1-103 and 23-1-104(b).[p] Accordingly, in administering the court's rules by denying Stanfield admission to

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denial]" and, second, the defendants acting as state public officals did not abuse the public trust of their public office(s) through the commission of a test score fraud against the plaintiff. The third fallacy is found in the words "inextricably intertwined". The magistrate's report, and now the district court judge's memorandum, assumes that the plaintiff first took the plaintiff's case to the defendants who rendered a quasi-judicial or "board's decision [or board's denial]" and, second, the plaintiff took the plaintiff's case to a state court which rendered a final judicial "state court decision" and, finally, the plaintiff brought the same case to the federal district court for a judicial decision. By means of this assumption, the magistrate, and now the district court judge, fallaciously reads the facts of the Hampton case and the Feldman case into the plaintiff's case.

The fallacy forces two results adversely affecting the substantive rights of the plaintiff. The first result is that the facts of the plaintiff's case are the same facts which were considered by the defendants, the state court and now to be considered by the federal district court. In this sense, the facts are "inextricably intertwined." The second result is that the same set of facts produced the "board's decision or [board's denial]," and the "state court decision" and now are to produce the federal district court decision. Since the facts were "inextricably intertwined" in each of the two previous hearings, the decisions in each of the two previous hearings were equally "inextricablyintertwined." Both the magistrate and the district court judge failed to produce any recorded records of the two separate judicial proceedings in which the plaintiff and the defendants were allegedly present and contested the plaintiff's case and from which contest two separate judicial decisions were rendered to provide the material and conclusive proof of the inextricable intertwinement between the two decisions which would bar the United States District Court from any other consideration of the plaintiff's case. The simple fact is that the plaintiff never participated in any quasi-judicial or judicial proceeding either before the "board" or any state court, trial or final state court in which a "board's decision [or board's denial]" or a final "state court decision" was ever rendered.

[p]As stated in the plaintiff's pleadings of February 16, 1989, Tenn. Code Ann. §§ 23-1-103 and 23-1-104 state that: "23-1-103. Examination of applicants. --There shall be an examination of persons applying for license to practice as attorneys and counselors at law at the cities of Knoxville, Nashville, and Memphis, respectively, and at such other places and times as the [Tennessee] Supreme Court may direct. The [Tennessee] Supreme Court shall prescribe rules to regulate the admission of persons to practice law and providing for a uniform system of examinations, which shall govern and control admission to practice law, and to regulate such board in the performance of its duties." "23-1-104. Certification and admission of successful applicant. --(a) Such board shall certify to the [Tennessee] Supreme Court the names of all applicants who shall have passed the required examination, and who are determined by said board to be of full age, and of such reputation and character as to

the bar for failure to pass the Tennessee bar examination as required,[q] the board of law examiners acted in a judicial

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be likely to contribute to upholding the high standards of the legal profession. (b) Upon such certification, if the Supreme Court shall find that such person is of full age and good moral character, and otherwise qualified, it shall enter an order licensing and admitting him to practice as attorney, solicitor and counselor in all the courts of the state, which license if procured by fraud, may be revoked at any time within two (2) years."

The ordinary prudent, thinking and inquiring mind can find nothing in the provisions of T.C.A. 23-1-103 and 23-1-104 just as they are to mean, or even to suggest, that: (1) the Tennessee Supreme Court not only granted blanket and unlimited authority to the defendants acting as state public officials to commit a test score fraud against the plaintiff under color of §§ 13.02(a) and 14.04 of Tennessee Supreme Court Rule 7 in violation of the plaintiff's rights secured by the Constitutional and statutory laws of the United States, (2) the defendants acting as state public officials who committed a test score fraud against the plaintiff "acted in a judicial capacity within the meaning of Feldman," (3) the "full authority" so retained by the Tennessee Supreme Court means the "full authority" to commit the illegal act of a test score fraud against the plaintiff.

[q] It requires seven (7) out of twelve (12) correct answers on the essay portion to pass the essay portion of the February, 1987, Tennessee bar examination. Plaintiff earned nine (9) out of twelve (12) correct answers on the essay portion of the February, 1987, Tennessee bar examination. In effect, the plaintiff passed the essay portion of the February, 1987, Tennesssee bar examination. The defendants sent eight (8) out of nine (9) correct answers to the plaintiff and withheld one (1) of the nine (9) correct answers from the plaintiff. Plaintiff requested the defendants to send the plaintiff the remaining correct answer to the essay portion of the Febtruary, 1987, Tennessee bar examination. But the defendants refused to do so until the defendants are permitted to wrongfully withhold fifty-two (52) points earned by the plaintiff on the multistate portion of the February, 1987, Tennessee bar examination.

The facts of the plaintiff's case show that notwithstanding the fact the plaintiff earned nine (9) out of twelve (12) correct answers, eight (8) of which the defendants later sent to the plaintiff, the defendants in mere empty words wrote the plaintiff to say that the plaintiff failed the essay portion of the February, 1987, Tennessee bar examination. The plaintiff, among other charges, charged the defendants with fraud, deception, equivocation, vindictiveness, retaliation, arbitrariness, capriciousness, unfairness, injustice, racism, sexism, discrimination, imposition, cheating, lying, etc.

The facts in the plaintiff's case show that the plaintiff earned 175 out of 200 correct answers on the multistate portion of the February, 1987, Tennessee bar examination. On April 11, 1987, the defendants informed the plaintiff of no failure on the multistate portion of the February, 1987, Tennessee bar examination. On April 23, 1987, the plaintiff filed a complaint against the defendants with the U. S. Civil Rights Commission and on April 24, 1987, that is 13 days after the official reporting date which was April 11, 1987, the defendants wrote the plaintiff to say in mere empty words that the plaintiff earned no passing test scores on the multistate portion of the February, 1987, Tennessee bar examiantion. The plaintiff charged the defendants with deliberate, willful, intentional and fraudulent reduction of the plaintiff's test scores on the February, 1987, Tennessee bar examination and an outright illegal commission of retaliation and vindictiveness against the plaintiff.

capacity within the meaning of Feldman, supra.[r] Accordingly, Stanfield's claim is a challenge to a state court decision[s] to deny her admission to the bar and is beyond this court's subject matter jurisdiction. Because Stanfield attacks the manner in which the state rules were applied to her application for admission to the bar, her remedy, if any, is only available through the Tennessee courts and then by appeal to the United States Supreme Court. Feldman, supra.

For the reasons set forth above, this action is beyond this court's subject matter jurisdiction and must be dismissed. Accordingly, the plaintiff's objections to the magistrate's report are overruled. The magistrate's report is adopted and approved and the defendants' motion to dismiss is granted.

An appropriate order will be entered.

Thomas A. Higgins
United States District Judge
1-9-89

[r] Does the defendants' fraudulent reduction of plaintiff's test scores from 9 and 175 to 8 and 123 on the essay and multistate portions of the February, 1987, Tennessee bar examination, respectively, mean the performance of "a state court judicial proceeding," or the exercise of "the Tennessee Supreme Court's admissions power," or the acting "in a judicial capacity within the meaning of Feldman" in which the plaintiff was given an opportunity to be heard and rebut the unsubstantiated allegation of a failure?

[s] As stated in the plaintiff's pleadings of December 1, 1988, the fallacy is found in the words "state court decision." The district court judge assumes that a state court held a judicial proceeding at which the plaintiff and the defendants were present and contested the plaintiff's case from which contest the state court rendered a final "state court decision". But the district court judge produced no recorded and reported state case containing the proceedings in which one can find this "state court decision."

E. Sixth Circuit Order of August 24, 1989

No. 89-5087

United States Court of Appeals
For the Sixth Circuit

Carmen R. Stanfield,

Plaintiff-Appellant,

v.

Betty W. Horn, Administrator, Board of Law Examiners of Tennessee; **Charles W. Burson**, President, Board of Law Examiners of Tennessee; **Lowry F. Kline**, Vice-President, Board of Law Examiners of Tennessee, **H. Lee Barfield, II**, Secretary-Treasurer, Board of Law Examiners of Tennessee,

Defendants-Appellees.

Filed
Aug. 24, 1989

Order

Before: Jones, Milburn and Nelson, Circuit Judges.

This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the 6th circuit. Upon examination of the

briefs and record, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Carmen R. Stanfield appeals the dismissal of her civil rights complaint filed under 42 U.S.C. § 1983 and § 2000 et seq., in which she alleges that because of her gender and race, officials of the board of law examiners of Tennessee fraudulently represented that she failed the Tennessee bar examination. Defendants moved to dismiss the complaint for, inter alia, lack of subject matter jurisdiction. The district court adopted the magistrate's recommendation for dismissal over plaintiff's objections.

Upon consideration, we conclude that the district court properly dismissed plaintiff's complaint for lack of jurisdiction. Generally, review of a **state court's final judgment**[a] in a bar admission matter is not available in federal district court. D.C. Court of Appeals v. Feldman, 460 U.S. 462, 476-86 (1983). Here, the district court correctly concluded that plaintiff seeks

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[a]Up to this point in the case, August 24, 1989, no state court final judgment factually and legally exists in this case. The only state court final judgment ever entered in this case was entered on March 1, 1990, more than 6 1/2 months after the the 6th circuit court of appeals entered this order of August 24, 1989. A state court final judgement, as stated in the plaintiff's pleadings of December 1, 1988, is the direct result of a "judicial proceeding" and the Black's Law Dictionary clearly defines a "judicial proceeding" as: "...A proceeding in a legally constituted court. A proceeding wherein there are parties, who have [an] opportunity to be heard, and wherein the tribunal proceeds either to a determination of the facts upon evidence or of law upon proved or conceded facts." Black's Law Dictionary 762 (5th ed. 1979).

Again, a state court final judgment is the direct result of a "judicial proceeding" and the United States Supreme Court in the Feldman case defined "judicial proceeding" as follows: "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The...making of a rule for the future,...therefore is an act legislative not judicial. *see* Feldman, 460 U.S. at 477, 103 S.Ct. at 1312 quoting Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 226, 29 S.Ct. 67, 69, 53 L.Ed. 150 (1908). The above August 24, 1989, order of the 6th circuit court of appeals failed to show a recorded and reported state case containing adversary parties together with their respective contested issues of fact and law in the judicial decision of which: (1) Tennessee Supreme Court Rule 7, Article 13, Section 2(a) was promulgated as a rule for the Tennessee Supreme Court and the board of law examiners of Tennessee, (2) Tennessee Supreme Court Rule 7, Article 14, Section 4 was promulgated as a rule

review of the **decision**[b] in her individual case attributable to the Tennessee Supreme Court. Therefore, jurisdiction does not lie in the district court.

Also, we note that plaintiff's contention that defendant['s] motion to dismiss was improperly referred to the magistrate is without merit.[c] Dispositive motions may be referred to the magistrate for a recommendation pursuant to 28 U.S.C. § 626(b)(1)(B).[d] Roland v. Johnson, 856 F.2d 764, 768 (6th Cir.

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for the Tennessee Supreme Court and the board of law examiners of Tennessee, (3) the defendants' seventeen (17) administrative discretionary enforcement rules, policies and practices dealing with the examination, the administration of the test scores of the examination, etc., were promulgated as rules for the board of law examiners of Tennessee. The absence of any state court final judgment means that the federal district court has subject matter jurisdiction in the present case.

[b]Since no state court final judgment ever existed in the present case until March 1, 1990, over 6 1/2 months after the 6th circuit court of appeals entered this order of August 24, 1989, it is not only a factual impossibility but also a legal impossibility for the district court to ever conclude that the plaintiff seeks a review of a state court decision in the plaintiff's individual case attributable to the Tennessee Supreme Court.

[c]The merit in the plaintiff's objection lies not merely in the fact that the plaintiff's case was wrongfully referred to the magistrate for a recommendation. The merit in the plaintiff's objection clearly lies in the fact that the plaintiff's case was wrongfully referred to the magistrate for the wrongful intention and purpose of illegally and deceitfully making a physical change of the verb "do" to the verb "do not" in a well-settled federal rule of law in the Feldman case which not only changed the rule of law itself, but also changed the outcome of the application of the rule of law and the status of the rights of the party who would otherwise prevail without the magistrate's wrongful change of the words in the well-settled federal rule of law. The plaintiff was not only duly required to report this professional misconduct on the part of the magistrate, but also duly required to object to the professional misconduct as extremely prejudicial to the administration of justice in the plaintiff's case pursuant to 28 U.S.C. § 372(c)(1) [1983].

[d]As stated in the plaintiff's pleadings of April 4, 1989, neither the magistrate nor the district court judge had legal authority under the provisions of 28 U.S.C. § 636(b)(1)(B) to act upon defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. The provisions of 28 U.S.C. § 636(b)(1)(B) state that: "a judge may designate a magistrate to conduct hearings, including evidentiary hearings, and submit to a judge of the court proposed findings of fact and recommendations for disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for **posttrial** relief made by individuals convicted of criminal offenses..."

First, distinctively, the present case by nature is a civil case, as differentiated from and opposed to a criminal case. Second, distinctively, the present case is at the "pretrial" stage, as differentiated from and opposed to the trial stage, not to mention the "posttrial" stage. Third, distinctively, the defendants's pretrial motion of failure to state a claim upon which relief can be granted was filed to dismiss the plaintiff's case at the "pretrial" stage, as differentiated from and opposed to the trial stage, not

1988). The district court conducted the required de novo[e] review. *See* Roland, 856 F.2d at 769. Further, plaintiff did not object to the referral in her objections to the magistrate's report; she thus waived appellate review of the claim. *See* Smith v. Detroit Fed'n of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir. 1987).

Accordingly, the judgment of the district court is affirmed. Rule 9(b)(5), Rules of the Sixth Circuit.

Entered by order of the court.

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to mention the "posttrial" stage. Fourth, distinctively, the defendants' pretrial motion concerns "failure to state a claim upon which relief can be granted," clearly excepted under the provisions of 28 U.S.C. § 636(b)(1)(A), which state that: "a judge may designate a magistrate to hear and determine any pretrial matter pending before the court **except** a motion...to dismiss for failure to state a claim upon which relief can be granted." Fifth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' motion, the district court judge lacked the authority to assign the defendants' "pretrial" motion to a magistrate. Sixth, under the provisions of 28 U.S.C. § 636(b)(1)(A) and 28 U.S.C. § 636(b)(1)(B), given the "pretrial" stage and civil nature of the plaintiff's case, and the excepted nature of the defendants' pretrial motion, the magistrate lacked authority to accept, to hear, and to make any recommendation whatsoever concerning the defendants' pretrial motion to dismiss the plaintiff's case for failure to state a claim upon which relief can be granted. Therefore, the magistrate's recommendation and the district court judge's ruling and order resting wholly on the contents of the magistrate's report and recommendation of September 30, 1988, "adopted and approved" by the district court judge, are without legal effect upon the district court's subject-matter jurisdiction over the plaintiff's case.

[e]To merely relabel the "old" extremely prejudicial decision of the magistrate as a "de novo," or "new," extremely prejudicial decision of the district court judge, as the district court judge has done in the present case, does not change the substantive nature of the fact that both the magistrate, as well as the district court judge, wrongfully changed a well-settled federal rule of law in the Feldman case in order to wrongfully defeat the subject matter jurisdiction of the federal district court over the plaintiff's case in violation of both the procedural and substantive due process of law rights of the plaintiff guaranteed by the Constitutional and statutory laws of the United States.

F. United States Supreme Court Order of December 11, 1989

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

December 11, 1989

Ms. Carmen R. Stanfield
P. O. Box 5688
Nashville, Tennessee 37208

Re: Carmen R. Stanfield, v. Betty W. Horn, et al., No. 89-627

Dear Ms. Stanfield:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk